

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 _____) Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO ALL CASES) Polster
12)

13 THURSDAY, JULY 11, 2019

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
15 CONFIDENTIALITY REVIEW

16 - - -

17 Videotaped deposition of Michael
18 Mapes, held at the offices of The Mining
19 Exchange, A Wyndham Grand Hotel & Spa,
20 8 South Nevada Avenue, Colorado Springs,
21 Colorado, commencing at 9:41 a.m., on the
22 above date, before Carrie A. Campbell,
23 Registered Diplomat Reporter and Certified
24 Realtime Reporter.

25 - - -

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1 VIDEOGRAPHER: We are now on
2 the record.

3 My name is Dan Lawlor. I'm the
4 videographer with Golkow Litigation
5 Services.

6 Today's date is July 11, 2019,
7 and the time is 9:41 a.m.

8 This video deposition is being
9 held in Colorado Springs, Colorado, in
10 the matter of National Prescription
11 Opiate Litigation, MDL Number 2804.

12 The deponent is Michael Mapes.
13 Counsel, please identify
14 yourselves, starting with the
15 plaintiffs.

16 MR. LANIER: My name is Mark
17 Lanier. I'm here on behalf of the
18 plaintiffs.

19 I've got with me from my firm
20 Bob Leone, Rachel Lanier, Georgia
21 Macy, Juan Wilson in the room.

22 And then I know that there are
23 other plaintiffs' attorneys present,
24 but I'll let them identify themselves.

25 MS. FITZPATRICK: Laura

1 Fitzpatrick, Simmons Hanly Conroy.

2 MR. FARRELL: Paul Farrell,
3 Jr., co-lead for the plaintiffs.

4 MR. PIFKO: Mark Pifko, Baron &
5 Budd, for plaintiffs.

6 MR. FULLER: Mike Fuller on
7 behalf of plaintiffs.

8 MS. MCCLURE: And we'll just
9 continue in the room and then we can
10 do the phone.

11 This is Shannon McClure, Reed
12 Smith, on behalf of AmerisourceBergen.

13 MS. PIERCE: Abby Pierce from
14 Reed Smith on behalf of
15 AmerisourceBergen.

16 MR. EPPICH: Chris Eppich of
17 Covington & Burling on behalf of
18 McKesson.

19 MS. MONAGHAN: Meghan Monaghan
20 of Covington & Burling on behalf of
21 McKesson.

22 MS. SWIFT: Kate Swift for
23 Walgreens.

24 MS. WICHT: Jennifer Wicht from
25 Williams & Connolly for Cardinal

1 Health.

2 MR. MASTERS: Brad Masters,
3 Williams & Connolly, Cardinal Health.

4 MR. LAVELLE: John Lavelle from
5 Morgan Lewis on behalf of Rite Aid of
6 Maryland.

7 MR. STEPHENS: Neal Stephens
8 from Jones Day for Walmart.

9 MR. SNAPP: Erik Snapp from
10 Dechert on behalf of the Purdue
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13 Kirkland & Ellis on behalf of the
14 Allergan defendants.

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22 Montminy, Locke Lord, on behalf of the
23 Henry Schein defendants.

24 MR. HAHN: Bill Hahn, Barnes &
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7 MR. BENNETT: James Bennett
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11 SPECIAL MASTER COHEN: David
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13 VIDEOGRAPHER: And counsel on
14 the phone, please identify yourselves.

15 MR. SHKOLNIK: Hunter Shkolnik,
16 plaintiffs.

17 MR. BEISELL: Patrick Beisell
18 for Walmart.

19 COURT REPORTER: I'm sorry, one
20 at a time, please.

21 MS. MCCLURE: Zach?

22 MR. MARTIN: This is Zach
23 Martin, Prescription Supply.

24 MR. SMITH: Jack Smith,
25 Flaherty Sensabaugh Bonasso, for

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2 MR. KOBRIN: Josh Kobrin for HB
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10 MS. BARBER: Maureen Barber
11 from Morgan Lewis for the Teva
12 defendants.

13 MR. RUIZ: Anthony Ruiz from
14 Zuckerman Spaeder for CVS.

15 MR. WEISS: Eric Weiss with
16 Cavitch, Familo & Durkin on behalf of
17 Discount Drug Mart.

18 VIDEOGRAPHER: All right. The
19 court reporter today is Carrie
20 Campbell and will now swear in the
21 witness.

22 EXAMINATION

23 QUESTIONS BY MS. MCCLURE:

24 Q. Good morning, Mr. Mapes.

25 A. Good morning.

1 Q. That was a lengthy introduction
2 to a big room with a lot of people here.

3 So I am Shannon McClure. I'm
4 from the law firm of Reed Smith. I represent
5 AmerisourceBergen Drug Corporation.

6 Thank you for coming here today
7 and tomorrow. We appreciate your appearance
8 here today.

9 We're just going to go through
10 some deposition ground rules so that you are
11 oriented to what we're going to be doing here
12 today.

13 Just to explain the timing to
14 you, which your counsel may have explained,
15 the defendants have been afforded eight hours
16 to question -- to question you, and the
17 plaintiffs have been afforded five hours.

18 Defendants and plaintiffs may
19 each elect to reserve some of their time to
20 go after, so the defendants may go and then
21 the plaintiffs and then a reservation of
22 time.

23 Do you understand that today?

24 A. Yes, I do.

25 Q. And so your deposition will

1 begin today and will continue and conclude
2 tomorrow.

3 This is a question and answer
4 format, so I'll be doing the questions for
5 the first part, and then there will be other
6 defendants who will take over questioning on
7 behalf of the defense, and then the
8 plaintiffs will as well.

9 If there's ever a time that I
10 ask you a question that you don't understand,
11 I would like you to please ask me to rephrase
12 the question and tell me that you don't
13 understand that.

14 Do you understand that
15 instruction?

16 A. Yes, I do.

17 Q. And similarly, if I insert
18 facts or assumptions into a question that are
19 inaccurate, then what I would like you to do
20 is to correct those.

21 Can we agree on that?

22 A. Yes.

23 Q. And similarly, when other
24 counsel question you in the room from either
25 side, will you agree that to the extent that

1 there are factual inaccuracies or predicates
2 that are inserted into a question that you
3 don't agree with, you will not only respond
4 to the question but you would correct those
5 factual inaccuracies?

6 A. Okay.

7 Q. And if you answer my question,
8 then I'm going to assume that you understood
9 the question as I asked it.

10 Is that fair?

11 A. Yes, it is.

12 Q. And today your answers must be
13 verbal. We do have a videocamera set up, but
14 nevertheless, in order for Carrie, the court
15 reporter, to take down what's been said in
16 the room, I do need you to -- instead of
17 nodding or shaking your head, I do need you
18 to provide verbal answers.

19 Can you agree to do that today?

20 A. Yes.

21 Q. It can be easy in the course of
22 normal conversation to nod or shake your
23 head, but she can't get that down.

24 A. Right.

25 Q. Similarly, often in human

1 conversation we know where the other person
2 is going or we start to finish the question
3 that they're asking or answer it before the
4 question has been completed. That makes it
5 difficult later when we need to go back and
6 look at the transcript as to what was said.

7 So what I would ask is that you
8 allow me to finish my questions, and then,
9 similarly, I will allow you to completely
10 finish your answers before I ask another
11 question.

12 Is that fair?

13 A. Yes.

14 Q. And if I do inadvertently
15 interrupt you -- and I assure you it is
16 inadvertent, I don't mean to -- then please
17 just let me know that you're not finished
18 answering, and I will of course stop and let
19 you finish your answer.

20 Is that fair?

21 A. Okay.

22 Q. Okay. There may be objections
23 from time to time interposed by any of the
24 counsel in the room, including Mr. Bennett.
25 For the most part, when objections are

1 interposed, you are still required to answer
2 the question after an objection, say, to
3 form.

4 Do you understand that?

5 A. Yes.

6 Q. There may be occasions where
7 you may be instructed not to answer the
8 question, and in that instance then you would
9 have to determine whether you would follow
10 the instructions of counsel and not answer
11 the question, and there may be discussions
12 among counsel about those instructions.

13 But for the most part, an
14 objection is simply for the record and then
15 you would be required to answer the question.

16 Do you understand that?

17 A. Yes.

18 Q. And you and I have never met
19 before. I introduced myself when I took the
20 government up to the breakout room; is that
21 correct?

22 A. That's correct.

23 Q. And we've never written or
24 exchanged any letters or e-mails?

25 A. That's correct.

1 Q. And we've never spoken on the
2 phone?

3 A. Not that I'm aware of.

4 Q. Or had any communication,
5 right?

6 A. Yep.

7 Q. Okay. And this is a question
8 that often comes up in depositions and might
9 seem strange to you, but it's a standard
10 question that we always ask witnesses.

11 Are you on any medications
12 today that would affect your ability to
13 recall information or testify truthfully here
14 today?

15 A. No.

16 Q. Okay. And you understand that
17 DOJ and DEA have authorized you to testify
18 here today on behalf -- regarding certain
19 topics about your work at DEA, right?

20 A. Yes.

21 (Mapes Exhibit 1 marked for
22 identification.)

23 QUESTIONS BY MS. MCCLURE:

24 Q. I'm going to hand you a
25 document that has been marked Mapes 1. And

1 if you could take a look at that document and
2 let me know when you've had an opportunity to
3 review it.

4 A. Okay. I've reviewed it.

5 Q. Now, given that this document
6 is addressed to you, is it fair for me to
7 assume that you have, in fact, seen this
8 document before?

9 A. I have.

10 Q. This is not the first time
11 you're seeing it?

12 A. That's correct.

13 Q. And to the best of your
14 recollection, did you receive it sometime
15 shortly after May 3, 2019, which is the date
16 on page 1?

17 A. Yes.

18 Q. Okay. The letter references a,
19 quote, "previous denial of authorization" in
20 the first sentence.

21 Do you see that?

22 A. Yes.

23 Q. Had you previously received a
24 communication from DEA or DOJ that there had
25 been a request for your deposition received

1 that had been denied?

2 A. Yes, I had.

3 Q. Okay. Do you recall when you
4 received that communication?

5 A. I don't really remember exactly
6 when it was.

7 Q. And you may not remember
8 exactly when it was. That's fair.

9 Today I'm asking you, right
10 now, about something that was several months
11 ago. In this deposition I'll be asking you
12 about things that may be several years ago or
13 even many years ago.

14 What I would like is for you to
15 tell me in each of those instances where I'm
16 asking you about a time period and you don't
17 exactly remember, that's totally fair. What
18 I would like you to do is tell me if you
19 think -- if you can approximate when it was.
20 Was it a couple of months before this, was it
21 a year before this, if you can recall.

22 A. Probably three or four months
23 before this.

24 Q. And I have not seen that
25 communication. Is it fair to say that it

1 would have been a shorter communication than
2 this one in the fact that you were not, in
3 fact, authorized and thus there were no
4 topics listed, or am I incorrect about that?

5 A. Yes, it was shorter.

6 Q. And in advance of today's
7 deposition, did you review the topics on
8 which you were authorized to provide
9 testimony?

10 A. I did.

11 Q. And that is Topics 1 through 8,
12 which are listed on pages 1 and 2, correct?

13 A. Yes.

14 Q. And then with regard to those
15 areas of testimony, there is a second list
16 which comprises A through M and lists out the
17 subsets of information that you would not be
18 permitted to testify about those topics.

19 Is that a fair reading of this
20 letter?

21 A. Yes.

22 Q. And so things that are
23 privileged information are things that you
24 would not be permitted to testify about
25 within those first eight topics on pages 1 to

1 2, correct?

2 A. Yes.

3 Q. Okay. You can set that
4 document aside for now.

5 Have you been contacted by any
6 party to act as an expert in this matter?

7 A. Yes, I have.

8 Q. And has that been in a
9 testifying expert capacity or in a consulting
10 expert capacity?

11 A. Consulting.

12 Q. Okay. And who is that entity
13 who has retained you?

14 A. The only one that's retained me
15 is Williams Connolly.

16 Q. And have you met with attorneys
17 from Williams & Connolly?

18 A. Yes.

19 Q. And you are aware that they
20 represent Cardinal Health, correct?

21 A. That's correct.

22 Q. Okay. With whom did you meet?

23 A. I've forgotten the names.

24 Jennifer and a couple other attorneys.

25 Q. And was that a single meeting?

1 A. Yes.

2 Q. How long was that meeting?

3 A. Six or seven hours.

4 Q. Do you recall approximately
5 when that meeting was?

6 A. It was the Monday after Easter,
7 whatever that day was.

8 Q. I don't know it either, but
9 thank you for -- that's helpful.

10 Did they provide any documents
11 for you to review, if you recall?

12 A. No, I don't recall reviewing
13 documents.

14 Q. Have you seen any of the
15 plaintiffs' expert reports in this case?

16 A. No.

17 Q. Did you review Cardinal's DEA
18 expert report authored by Brian Reise?

19 A. No.

20 Q. Since the time that you were
21 authorized by DEA on May 3, 2019, to testify
22 as a fact witness in this case, have you
23 spoken with anyone at Williams & Connolly or
24 anyone representing Cardinal Health about any
25 work for them?

1 A. No.

2 Q. Have you done any expert work
3 in this case since you were authorized to
4 testify pursuant to Exhibit 1, which is the
5 May 3rd letter?

6 A. No.

7 Q. Did you meet with anyone to
8 prepare for your deposition today?

9 A. Yes, I did.

10 Q. Okay. And who did you meet
11 with?

12 A. The three attorneys here.

13 Q. And by "the three attorneys
14 here," you're talking about the three
15 attorneys to your left --

16 A. Yes.

17 Q. -- which is Mr. Bennett,
18 Ms. Spears and Ms. Bacchus?

19 A. Yes.

20 Q. Was there anyone else in those
21 meetings?

22 A. No.

23 Q. Were those meetings conducted
24 as a conference call?

25 Was there anyone on a phone?

1 A. No.

2 Q. Did you meet one time or more
3 than one time with those three attorneys?

4 MR. BENNETT: Objection. Form.

5 Are you talking about for this
6 deposition?

7 MS. MCCLURE: Let me rephrase.

8 QUESTIONS BY MS. MCCLURE:

9 Q. The three attorneys to your
10 left that you identified, have you met with
11 them for multiple reasons, in other words,
12 for this deposition and for other reasons?

13 A. Yes, I met with them twice.

14 Q. Okay. What was the nature
15 of -- I assume one of the meetings, at least,
16 was to prepare for this deposition; is that
17 correct?

18 A. It is.

19 Q. And what was the nature of the
20 other meeting?

21 A. To discuss my background with
22 DEA, the things that I've done, what I've
23 been involved in, that kind of thing.

24 Q. So is it fair to say that that
25 was an informational meeting that you had

1 with these three attorneys?

2 A. Yes.

3 Q. And then the second meeting was
4 specifically to prepare for the deposition?

5 A. Yes.

6 Q. How long did the first
7 meeting -- and by "the first meeting," I'm
8 referring to the informational meeting --
9 last?

10 A. Three or four hours.

11 Q. Where was that meeting?

12 A. It was in the DEA office here
13 in Colorado Springs, and some people were on
14 the phone.

15 Q. Okay. So for the informational
16 meeting, who was physically present with you
17 in the room at the DEA office in Colorado
18 Springs?

19 A. Mr. Bennett was, and I don't
20 recall if anyone else was physically present
21 in the room.

22 Q. To the best of your
23 recollection, were Ms. Bacchus and Ms. Spears
24 on the phone for that meeting, that
25 informational meeting?

1 A. I'm not sure who was on the
2 phone. I don't remember.

3 Q. So it's possible there are
4 other attorneys, other than the three you've
5 named here today, who were present on the
6 phone for that first informational meeting?

7 A. It's possible, yes.

8 Q. But as of right now, you just
9 don't remember who they were?

10 A. That's correct.

11 Q. For the second meeting to
12 prepare for this deposition, how long was
13 that meeting?

14 A. Four hours.

15 Q. Where was that meeting?

16 A. At the DEA office here in
17 Colorado Springs.

18 Q. And when was that meeting?

19 A. Yesterday.

20 Q. When was the informational
21 meeting that was the first meeting?

22 A. Early this year. I don't know
23 exactly when, but several months ago.

24 Q. Do you recall whether that
25 first meeting was before or after you

1 received that first communication that I
2 don't have a copy of that did not authorize
3 you to appear for a deposition?

4 A. I'm not certain.

5 Q. Have you met with anyone from
6 plaintiffs' counsel in preparing for today's
7 deposition or in the informational meeting
8 that you discussed that was several months
9 ago?

10 MR. BENNETT: Objection.

11 Compound.

12 QUESTIONS BY MS. MCCLURE:

13 Q. Let me rephrase.

14 Did you meet with anyone from
15 plaintiffs' counsel today before -- in
16 preparation for today's deposition?

17 A. No.

18 Q. Okay. And so some names of
19 plaintiffs' attorneys would be Mark Lanier,
20 Don Migliori, Linda Singer, Jayne Conroy,
21 Ms. Finkelstein, Hunter Shkolnik, Pete
22 Weinberger, Mike Fuller, Mark Pifko, Paul
23 Farrell, none of those attorneys were
24 attorneys that you met with in preparation
25 for your deposition today?

1 MR. BENNETT: Objection. Form.

2 You can answer.

3 THE WITNESS: That's correct.

4 QUESTIONS BY MS. MCCLURE:

5 Q. During your meeting yesterday
6 to prepare for this deposition today, was
7 there anyone on the phone?

8 A. No.

9 Q. And to the best of your
10 knowledge, that long list of plaintiffs'
11 attorneys that I've provided you were not on
12 the phone for your informational meeting, but
13 you can't be certain because you don't recall
14 exactly who was on the phone; is that fair?

15 A. I believe anybody that was on
16 the phone was a government attorney, so they
17 wouldn't have been the plaintiffs' attorneys.

18 Q. Great. Thank you.

19 And have you retained private
20 counsel for this deposition here today?

21 A. No, I have not.

22 Q. So you didn't work with any
23 private counsel in preparation for your
24 testimony here today?

25 A. That's correct.

1 Q. And by "private counsel," I'm
2 referring to nongovernmental attorneys.

3 A. Right.

4 Q. Okay. Separately from the
5 meetings we've discussed, which is the
6 informational meeting several months ago and
7 then the preparation for your deposition here
8 today, have you met with plaintiffs' counsel
9 regarding this case generally?

10 A. I did meet with plaintiffs'
11 counsel a couple of times in Washington, DC.

12 Q. And by "a couple of times,"
13 does that mean two times?

14 A. Yes.

15 Q. And was that two different
16 times or two consecutive days?

17 A. Two different times.

18 Q. When were those meetings,
19 approximately?

20 A. Last late summer and fall.

21 Q. So summer and fall of 2018?

22 A. Yes.

23 Q. How long were those meetings?

24 A. Two or three hours each.

25 Q. Where were they?

1 A. In an office downtown in DC.

2 Q. Do you recall whose office?

3 A. No, I don't.

4 Q. And who attended those?

5 Well, let me ask first this
6 question. We'll call those the first and
7 second meetings in the spring and fall
8 of 2018 -- summer and fall of 2018.

9 For the summer of 2018 meeting,
10 who attended that meeting?

11 A. Joseph Rannazzisi, who was also
12 with DEA, retired, myself, and there were
13 five or six attorneys from various law firms.

14 Q. Do you recall their names?

15 A. No, I don't.

16 Q. Do you see any of those
17 attorneys in the room here today?

18 A. No.

19 Q. How did that meeting come
20 about, that summer of 2018 meeting?

21 A. I was contacted by Joseph
22 Rannazzisi. He told me that he was working
23 with this group and asked me to come to
24 Washington to meet with the group.

25 Q. When you say he said "he was

1 working with this group," what group did he
2 mean, to your understanding?

3 A. This group of attorneys that
4 were plaintiffs' attorneys.

5 Q. And so you understood that
6 these were plaintiffs' attorneys representing
7 city, county governments in opioid
8 litigation?

9 A. Representing -- excuse me.
10 Representing states, Indian tribes, cities,
11 counties.

12 Q. Okay. Any other type of
13 entities you understood that this group of
14 plaintiffs' attorneys represented?

15 A. No.

16 Q. And was Joseph Rannazzisi
17 present for the entire first meeting in the
18 spring -- in the summer or fall of 2018?

19 A. He was.

20 Q. Were you retained as an expert
21 at the conclusion of either the first or the
22 second meeting in 2018 with plaintiffs'
23 counsel?

24 A. No, I was not.

25 Q. Tell me what you can remember

1 from those meetings.

2 A. Generally, discussions about
3 DEA policies, suspicious order monitoring,
4 that kind of issue.

5 Q. The second meeting in summer or
6 fall of 2018, who was present?

7 A. Joseph Rannazzisi was present
8 and some of the same group of attorneys.

9 Q. But do you know whether it was
10 the exact same group or it might have shifted
11 to some degree?

12 A. It could have been shifted
13 somewhat, but mostly the same.

14 Q. Do you see any attorneys in
15 this room who attended that second meeting?

16 A. No.

17 Q. And why did the second meeting
18 happen, to your knowledge?

19 A. They had more questions about
20 suspicious order monitoring, quotas, ARCOS,
21 those kind of issues.

22 Q. Other than DEA policies,
23 quotas, ARCOS and suspicious order
24 monitoring, can you recall any other topic
25 from either of those two meetings that you

1 discussed with plaintiffs' counsel?

2 A. No.

3 Q. Do you remember what you
4 discussed about quotas?

5 A. Very little, because my
6 knowledge of quotas is very limited.

7 Q. Of that very little that you
8 discussed about quotas, do you remember what
9 specifically you discussed about quotas given
10 your limited knowledge?

11 A. That there are quotas set for
12 manufacturing of certain drugs, and the DEA
13 sets those quotas, and different
14 manufacturers have their share of the quota
15 for different drugs. That's about it.

16 Q. Do you recall what you
17 discussed in those two meetings about ARCOS?

18 A. Just generally what ARCOS is
19 and where the information comes from and how
20 it's used.

21 Q. And what is ARCOS?

22 A. ARCOS is a system that collects
23 information from all sales of Schedule II
24 drugs and Schedule III narcotic drugs.

25 Q. So it's transactional data?

1 A. Yes.

2 Q. Provided by whom?

3 A. By the registrants that are
4 selling the drugs.

5 Q. And what did you tell
6 plaintiffs' counsel about how ARCOS is used?

7 A. It's used to see which drugs
8 are going to which pharmacies from which
9 wholesalers. It's used to look at pharmacies
10 to see if they're buying from several
11 wholesalers, that kind of thing.

12 Q. ARCOS is accessible to DEA,
13 correct?

14 A. Yes.

15 Q. ARCOS is not accessible to
16 registrants in the industry, correct?

17 A. I don't know if it is today.
18 It was not when I was there.

19 Q. So registrants would generally
20 have access to their own transactional data,
21 correct?

22 A. Yes.

23 Q. But not the transactional data
24 of, say, a competitor of theirs who is also a
25 wholesaler?

1 A. That's correct.

2 Q. And what did you tell the
3 plaintiffs' attorneys regarding suspicious
4 order monitoring, that topic?

5 A. We discussed the suspicious
6 order monitoring, what the regulation says
7 about suspicious order monitoring, and what
8 the current practice is within DEA.

9 Q. And by "current practice," you
10 mean today?

11 A. Yes.

12 Q. Now, you left DEA. We'll go
13 through your background in more detail, but
14 you left DEA in 2007, correct?

15 A. That's correct.

16 Q. But you're aware of the current
17 practice today with respect to DEA because
18 you are still in the industry and are aware
19 of DEA practices; is that fair?

20 A. That specific practice, yes,
21 because I've talked to DEA folks about it.

22 Q. When you say you've "talked to
23 DEA folks" about that specific practice, are
24 you saying you've talked to DEA folks since
25 you left DEA in 2007 regarding DEA's approach

1 to suspicious order monitoring?

2 A. Yes.

3 Q. With whom have you had
4 discussions at DEA since you left it in 2007
5 about DEA's approach to suspicious order
6 monitoring?

7 A. More than one person. The one
8 I remember is Cathy Gallagher, who was the
9 chief of the liaison and policy section.

10 Q. And have you talked with
11 Ms. Gallagher once or more than once?

12 A. More than once.

13 Q. How regularly have you
14 communicated with Ms. Gallagher since 2007
15 regarding DEA's approach to suspicious order
16 monitoring?

17 A. Not regularly. It's been two
18 or three times, possibly.

19 Q. And that's two or three times
20 since 2007?

21 A. Yes.

22 Q. Have you spoken with anyone
23 else at DEA regarding DEA's approach to
24 suspicious order monitoring since the time
25 you left DEA?

1 A. No.

2 Q. So a minute ago when I asked
3 you with whom had you spoken with DEA since
4 you left in 2007 about DEA's approach to
5 suspicious order monitoring, I thought you
6 indicated that it was more than one person,
7 but the one that you remembered was Cathy
8 Gallagher.

9 Is there more than one person
10 that you've spoken with since 2007?

11 A. I don't recall talking to
12 anyone else about that specific subject.

13 Q. Have you talked with DEA
14 representatives since you left in 2007 about
15 other nonsuspicious order monitoring topics?

16 A. About DEA policy specifically
17 or about other --

18 Q. I'm not asking about your
19 personal connections with people you may have
20 worked with that you keep in touch with about
21 non-DEA matters.

22 So my question is limited to
23 DEA-related matters, whether it's suspicious
24 order monitoring or policies or something
25 else, enforcement approach. You tell me what

1 the topics would be.

2 MR. BENNETT: Objection. Form.

3 Go ahead.

4 THE WITNESS: I have spoken
5 with other people in DEA about issues
6 related to pharmacies that I was
7 working for and DEA's approach with
8 those pharmacies.

9 QUESTIONS BY MS. MCCLURE:

10 Q. So about specific registrants?

11 A. Yes.

12 Q. That you were either employed
13 by or consulting for?

14 A. Yes, employed by.

15 Q. And was the nature of those
16 conversations asking for guidance from DEA,
17 or were you providing information to DEA?

18 A. Providing information about
19 what the pharmacy was doing, how they were
20 handling controlled substances.

21 Q. How about the topic of DEA
22 policies?

23 We're going back to the
24 meetings that you had in summer and fall
25 of 2018 with plaintiffs' counsel.

1 What did you tell plaintiffs'
2 counsel regarding DEA's policies?

3 A. Are we talking a particular
4 policy, like suspicious orders, or...

5 Q. I don't know.

6 Did you discuss more than one
7 policy, DEA policy, with plaintiffs' counsel?

8 A. I don't think so because I
9 hadn't been there for a number of years, so I
10 wasn't sure what DEA's current policies are
11 on most topics.

12 Q. But you recall discussing
13 suspicious order monitoring, DEA policies,
14 with plaintiffs, correct?

15 A. Yes.

16 Q. And were those DEA policies
17 that you discussed with plaintiffs in the
18 summer or fall of 2018 the policies that had
19 been in effect when you were at DEA? So
20 prior to December of 2007.

21 A. We discussed those policies as
22 part of the Distributor Initiative meetings
23 that we had with wholesalers.

24 Q. Were you paid for your
25 attendance at these two meetings?

1 A. Yes.

2 Q. How much were you paid?

3 A. \$300 an hour.

4 Q. And each of the meetings was
5 two to three hours, meaning that the most it
6 was was six hours, is that correct, in total?

7 A. It may have been an hour or two
8 more. I don't recall for sure.

9 Q. Okay. Were you asked to serve
10 as an expert at the conclusion of or during
11 these meetings?

12 A. We discussed it, but it didn't
13 go any further.

14 Q. Why?

15 A. You would have to ask them.

16 Q. Do you have any understanding
17 as to why you were not retained as an expert?

18 A. No.

19 Q. Were those meetings
20 informational meetings in which you were
21 providing information to the plaintiffs, or
22 were the plaintiffs also providing you
23 information about their lawsuits?

24 A. It was mostly me providing
25 information to them in response to their

1 questions.

2 Q. Do you recall any information
3 that they provided to you?

4 A. No.

5 (Mapes Exhibit 2 marked for
6 identification.)

7 QUESTIONS BY MS. MCCLURE:

8 Q. I'm going to hand you a
9 document that's been marked as Mapes
10 Exhibit 2, which is a LinkedIn printout of
11 your bio.

12 If you could take a moment and
13 review that, and let me know when you've had
14 a chance to do so.

15 A. I have.

16 Q. And so according to this
17 profile, you worked for DEA for a little more
18 than 30 years in total, correct?

19 A. That's correct.

20 Q. From 1977 to 2007?

21 A. Yes.

22 Q. And you held a number of
23 positions over the course of your tenure at
24 DEA, correct?

25 A. Correct.

1 Q. Were all of those positions in
2 the diversion side of DEA?

3 MR. BENNETT: Objection. Form.

4 THE WITNESS: They were all
5 related to the diversion program, yes.

6 QUESTIONS BY MS. MCCLURE:

7 Q. And so some of your positions
8 may not have been actually having you housed
9 in diversion, but the subject matter about
10 which you were employed for DEA related to
11 diversion in all of your 30-year -- in all of
12 your positions over 30 years?

13 A. That's correct.

14 Q. You started out as a diversion
15 investigator in Detroit and Cleveland?

16 A. Yes.

17 Q. Detroit was approximately
18 '80 -- sorry, '77 to '83 or '84?

19 A. Yes.

20 Q. And then Cleveland was '83 or
21 '84 to '85 or '86?

22 A. Yes.

23 Q. I note that you graduated from
24 college, which was Ferris State University,
25 in 1974; is that correct?

1 A. It is.

2 Q. And then what -- did you have
3 any jobs or positions between 1974 and 1977?

4 A. I did.

5 Q. What were those?

6 A. I was a deputy sheriff for
7 about two and a half years in Michigan, and
8 after that I worked for the -- as a civilian
9 for the Department of the Army as a budget
10 analyst for about a year.

11 Q. And then you applied for a
12 position at DEA?

13 A. Yes.

14 Q. What is a diversion
15 investigator?

16 A. Someone that investigates
17 registrants or potential registrants that
18 handle controlled substances, investigates
19 the movement of controlled substances and
20 diversion of controlled substances from
21 legitimate channels.

22 Q. In the course of your duties as
23 a diversion investigator, did you conduct
24 audits or cyclic investigations of
25 registrants?

1 A. I did.

2 Q. Including wholesalers?

3 A. Yes.

4 Q. In connection with those cyclic
5 audits -- am I using the correct phrase?

6 A. Yes.

7 Q. Okay. In connection with those
8 cyclic audits, would you review suspicious
9 order monitoring systems?

10 A. Yes.

11 Q. Was that a standard part in
12 your experience of a diversion investigator's
13 role?

14 A. It was.

15 Q. And so it was a responsibility
16 that diversion investigators needed to carry
17 out with respect to registrants for the field
18 office to which they were assigned?

19 A. That's correct.

20 Q. The results of those audits
21 would be reported on a DEA 6 report?

22 A. They would.

23 Q. If a diversion investigator
24 determines that a registrant was not
25 complying with the regulations, would the

1 investigator tell the registrant what that
2 registrant was doing wrong?

3 MR. BENNETT: Objection.

4 Incomplete hypothetical.

5 QUESTIONS BY MS. MCCLURE:

6 Q. You can answer.

7 A. Yes, they would.

8 Q. And that's in your experience
9 at DEA?

10 A. Yes.

11 Q. As a diversion investigator?

12 A. Yes.

13 Q. And later as a group
14 supervisor, you expected your diversion
15 investigators to communicate with registrants
16 about what they were doing wrong?

17 A. Yes.

18 Q. So that they could correct it?

19 A. That's right.

20 Q. Was it an expectation in your
21 experience that a diversion investigator in
22 such a circumstance would follow up to see if
23 that issue had been corrected?

24 MR. BENNETT: Objection. Form.

25 THE WITNESS: It would be

1 followed up, whether it was by that
2 diversion investigator or another one.

3 QUESTIONS BY MS. MCCLURE:

4 Q. Okay. Audits can also be
5 conducted outside of the cyclic process if
6 there was a particular reason or something
7 came up that suggested that an audit might be
8 appropriate; is that accurate?

9 A. It is.

10 Q. What was your next position at
11 DEA after diversion investigator in
12 Cleveland?

13 A. I was a staff coordinator at
14 headquarters in Washington, DC.

15 Q. And was that for -- for how
16 long a period of time?

17 A. A little less than a year.

18 Q. What is the job of a staff
19 coordinator?

20 A. To review the reports from a
21 field office and the requests from the field
22 office for assistance with investigative
23 matters.

24 Q. So do I have it correct that a
25 field office, one of DEA's field offices, may

1 reach out to headquarters because they had
2 something that they required more resources
3 for than they had available to them?

4 A. Either resources in terms of
5 funding or in terms of more personnel or
6 whatever they needed.

7 Q. Did headquarters have access to
8 some information that a field office would
9 not have had access to?

10 A. Yes.

11 Q. Let me rephrase that question.
12 Would a diversion investigator
13 reach out to a staff coordinator such as
14 yourself to get some information to support
15 an investigation?

16 MR. BENNETT: Objection. Form.

17 THE WITNESS: They may.

18 QUESTIONS BY MS. MCCLURE:

19 Q. You later became an instructor
20 at Quantico?

21 A. Yes.

22 Q. Quantico is a location in
23 Virginia where DEA diversion investigators
24 train; is that right?

25 A. It is.

1 Q. And what did you -- did you, in
2 fact, instruct those potential diversion
3 investigators in the course of that position?

4 A. I did.

5 Q. What did you instruct them
6 about?

7 A. Various topics related to
8 diversion, whether it's drug field testing,
9 auditing, those kind of things.

10 I didn't do the majority of the
11 teaching for diversion investigators. We had
12 folks from the field come in and do that.

13 Q. But you did some instruction
14 about diversion?

15 A. Yes.

16 Q. Your next position in the
17 1990s, if I have this timing correct, was as
18 a group supervisor in the Denver field
19 office?

20 A. That's correct.

21 Q. What were the years of that
22 position?

23 A. Roughly '92 to '97.

24 Q. Were you also a regional
25 manager of diversion control --

1 A. Yes.

2 Q. -- in that same time period?

3 A. Yes. The diversion program

4 manager, yes.

5 Q. Is that a different position,

6 or is that part of the group supervisor

7 title?

8 A. That's a different position.

9 Q. How did the duties of a

10 diversion program manager differ from those

11 of a group supervisor?

12 A. The supervisor supervises a

13 group of investigators, in this case in the

14 Denver office, and the manager deals with the

15 supervisor in Denver, the supervisor in Salt

16 Lake City, the supervisor in Albuquerque, in

17 the entire field division.

18 Q. Okay. So the regional man --

19 I'm sorry. The diversion program manager is

20 a higher-up position than the group

21 supervisor?

22 A. Yes.

23 Q. And what were the years that

24 you held the position of diversion program

25 manager?

1 A. Roughly '97, '98-ish.

2 Q. And in each of these two
3 positions, the group supervisor position and
4 the diversion program manager position, you
5 oversaw diversion investigators, or the group
6 supervisors who are overseeing those
7 diversion investigators, in connection with
8 their oversight and investigation and
9 enforcement of the Controlled Substances Act;
10 is that correct?

11 A. Yes.

12 Q. What was your next position
13 after diversion program manager?

14 A. Liaison with the United Nations
15 International Archives Control Board in
16 Vienna, Austria.

17 Q. Did you actually live in
18 Vienna?

19 A. Yes.

20 Q. And that was for approximately
21 two years?

22 A. Yes.

23 Q. And what were your
24 responsibilities in that position?

25 A. Working mostly with the

1 precursor control group of the UN to deal
2 with issues between countries about shipments
3 of precursor chemicals for controlled
4 substance manufacture.

5 Q. And your next position was
6 deputy chief of the liaison and policy
7 section?

8 A. It was.

9 Q. And is that a promotion from
10 what your prior position had been?

11 A. No, it was a lateral.

12 Q. Was it a promotion from the
13 diversion program manager role?

14 A. No, it was lateral.

15 Q. That's all lateral.

16 And what were your
17 responsibilities as deputy chief of liaison
18 and policy?

19 A. Working with the staff
20 coordinators and with the section chief to
21 work with the industry to interpret policies
22 and procedures, and work with those who were
23 writing Federal Register announcements about
24 various issues.

25 Q. When you say "work with those

1 who were writing Federal Register
2 announcements," what does that mean?

3 A. For issues related to the
4 Office of Diversion, there were a couple of
5 people in liaison and policy who wrote the
6 Federal Register announcements about
7 policies, and so we'd review those and
8 discuss those and that kind of thing.

9 Q. So did you have oversight
10 responsibility over the individuals who were
11 writing announcements about DEA policies in
12 the Federal Register?

13 A. They worked for a unit chief,
14 and the unit chief reported to the section
15 chief that I worked with, but I didn't have
16 oversight.

17 Q. What was your next position
18 after deputy chief of liaison and policy?

19 A. I was chief of the planning and
20 resources section at headquarters.

21 Q. How long did you have that
22 role?

23 A. About two years.

24 Q. So what years are we in at this
25 point for the planning and resources role?

1 A. 2003 and '4, possibly.

2 Q. And what were the
3 responsibilities of that position?

4 A. Dealing with personnel issues,
5 hiring, budget issues, equipment, those kind
6 of things.

7 Q. And your next position after
8 the planning and resources one?

9 A. Was chief of the E-Commerce
10 section.

11 Q. So did that begin in
12 approximately 2004?

13 A. Yes.

14 Q. And go through when?

15 A. Middle of 2005.

16 Q. What is chief of a section at
17 DEA? What does that mean?

18 A. It means that there are units
19 within a section that have people that are
20 performing various functions, and the section
21 chief is the manager of the unit chiefs.

22 Q. So who were the unit chiefs
23 that you were overseeing in the E-Commerce
24 section?

25 MR. BENNETT: Objection to

1 form. Time.

2 QUESTIONS BY MS. MCCLURE:

3 Q. So he's identified the time
4 period as -- am I correct that it's 2004 to
5 2005 that you were the chief of E-Commerce?

6 A. Yes.

7 Q. How many unit chiefs did you
8 have?

9 A. Three, I believe.

10 Q. And did they each have
11 different roles?

12 A. Yes.

13 Q. What were those roles?

14 A. One was dealing with the
15 programs known as CSOS and EPCS, computerized
16 programs, one was detailing with the
17 contractors that were working in the
18 programs, and one was the targeting and
19 analysis unit that was looking at data from
20 available sources.

21 Q. Did the data from available
22 sources that the targeting and analysis unit
23 look at include ARCOS?

24 A. Yes.

25 Q. What other sources?

1 MR. BENNETT: Objection.

2 Scope.

3 You're not authorized to
4 disclose any confidential law
5 enforcement databases or confidential
6 law enforcement investigative tools.

7 To the extent that you can
8 answer without disclosing such
9 confidential databases or
10 investigative tools, you may answer
11 the question.

12 THE WITNESS: There's none
13 other -- other tools that are public
14 tools.

15 QUESTIONS BY MS. MCCLURE:

16 Q. So the only public tool that
17 you are authorized here to discuss today that
18 targeting and analysis work with is ARCOS,
19 correct?

20 A. Correct.

21 Q. In that role as chief of
22 E-Commerce, did you meet with registrants?

23 A. I had meetings with
24 representative of different registrants to
25 talk about different issues.

1 Q. What do you mean by
2 "representatives"?

3 A. It might be someone from their
4 IT department or someone from their legal
5 department or someone from their compliance
6 department or something like that.

7 Q. You then served as the chief of
8 the regulatory unit?

9 A. That's correct.

10 Q. What is the regulatory unit?

11 A. It was a unit that looked at --
12 well, it was a section that looked at the
13 regulatory investigations that were done
14 within the Office of Diversion Control by the
15 field offices. Also issued import/export
16 declarations and permits for controlled
17 substances that were coming into or leaving
18 the country.

19 Q. When you say that that section
20 looked at the regulatory investigations that
21 were done within the Office of Diversion
22 Control, what does that mean, to look at
23 them?

24 A. It means all the reports that
25 are written by the field offices come to the

1 staff coordinators in headquarters that
2 review those to see if they're following the
3 appropriate policies and procedures and see
4 if there are issues that are consistent
5 issues across the country with several
6 registrants or not.

7 Q. What would those reports be
8 called that you reviewed?

9 A. They would be DEA 6s that were
10 reports of investigation of registrants of
11 any kind.

12 Q. You left DEA in 2007?

13 A. That's correct.

14 Q. At that time were you the chief
15 of the regulatory unit?

16 A. The regulatory section, yes.

17 Q. I'm sorry, the regulatory
18 section.

19 And why did you leave DEA?

20 A. I retired.

21 Q. And after that you became a
22 consultant, correct?

23 A. Yes.

24 Q. Is that what iSAW means,
25 I-S-A-W? Is that your company?

1 A. No, it's not.

2 Q. Okay. What is iSAW?

3 A. It's a company that's
4 developing technology to identify suspects
5 and witnesses to criminal activity.

6 Q. Is iSAW related to diversion --

7 A. No.

8 Q. -- or the pharmaceutical
9 industry?

10 A. No.

11 Q. After you left DEA in 2007,
12 were you also a consultant in the industry
13 for diversion-related questions or issues?

14 A. Yes, I was.

15 Q. And did that -- did you form a
16 consulting company for that?

17 A. No, that was mostly an
18 independent consultant.

19 Q. But there's not a company name
20 or something like that that I would -- that
21 you would be able to tell me for the purpose
22 of your post-DEA consulting to industry
23 regarding diversion?

24 A. A pharmacy that I worked for
25 created a company to do consulting. That was

1 a Controlled Substance Compliance Group, but
2 that was owned by that pharmacy, and I worked
3 with them and did consulting.

4 Q. When did you begin working for
5 that pharmacy?

6 A. About 2009.

7 Q. And what is that pharmacy
8 called at that time in 2009?

9 A. At the time that pharmacy was
10 Assured Pharmacy.

11 Q. And so Assured created a
12 subsidiary company called the Controlled
13 Substance Compliance Group.

14 Do I have that correct?

15 A. Yes.

16 Q. And you began working for the
17 Controlled Substance Compliance Group in
18 2009?

19 A. No, that wasn't created until
20 probably 2013-ish.

21 Q. And so initially you worked
22 directly for Assured?

23 A. Yes.

24 Q. What kinds of activities did
25 you do for Assured?

1 A. I was the chief compliance
2 officer for the group of pharmacies and wrote
3 policies and procedures, reviewed the
4 pharmacies to be sure they're following the
5 policies and procedures.

6 Q. Are you still working for
7 Assured today?

8 A. No.

9 Q. When did you stop working for
10 Assured?

11 A. Assured was bought out by
12 another group called Cordant Health Services,
13 and so they became known as Cordant
14 pharmacies, and I worked with them through
15 the end of 2015.

16 Q. So from 2009 through 2015, you
17 were working for Assured or Cordant,
18 depending on what the name was at the time?

19 A. Right.

20 Q. Did your job duties change over
21 that 2009 to 2015 time period?

22 A. No.

23 Q. Going back to your independent
24 consulting unrelated to Assured or Cordant,
25 there's no company name that you had or that

1 you used for that kind of consulting,
2 correct?

3 A. Correct.

4 Q. And who were your clients in
5 the independent consulting business that you
6 had after leaving DEA, to the best that you
7 can recall?

8 A. AmerisourceBergen, HD Smith,
9 Meijer Company, M-e-i-j-e-r, Henry Schein,
10 Physicians Pharmaceutical Corporation.

11 There's others I just can't
12 recall this second.

13 Q. Okay. During what period of
14 time were you acting as an independent
15 consultant after leaving DEA in 2007?

16 A. The --

17 Q. And I'm talking now
18 specifically about the consulting relating to
19 diversion.

20 A. From 2008 through 2015 or '16.

21 Q. So there's some overlap there
22 between the independent consulting work that
23 you were doing and your work for Assured and
24 Cordant in terms of time, correct?

25 A. Yes. Assured was part time.

1 Q. Okay. Did Assured become full
2 time at some point?

3 A. No.

4 Q. So for the entire 2009 to 2015
5 time period with Assured and then Cordant,
6 that was all part time?

7 A. That's correct.

8 Q. What was your first position
9 that was physically located at DEA
10 headquarters?

11 A. That was the staff coordinator.

12 Q. Okay.

13 MR. BENNETT: Do you need a
14 break, or are you okay?

15 QUESTIONS BY MS. MCCLURE:

16 Q. And that was 2001 to 2003?

17 A. No.

18 Q. If I have it wrong, then tell
19 me.

20 A. Yeah, that was -- that was
21 earlier than that. That was right after
22 Cleveland.

23 Q. Okay. Thank you.

24 So Cleveland ended in '85, '86,
25 right?

1 A. Yes.

2 Q. Okay. Then you went back into
3 the field, correct, at some point?

4 MR. BENNETT: Objection. Form.

5 QUESTIONS BY MS. MCCLURE:

6 Q. When you were working -- let me
7 rephrase that.

8 During the time that you were a
9 group supervisor, that was in Denver --

10 A. Correct.

11 Q. -- not at headquarters,
12 correct?

13 A. Correct.

14 Q. And during the time that you
15 were the diversion program manager, that was
16 not physically located at headquarters,
17 correct?

18 A. Correct.

19 Q. Okay. When was the next
20 position that you had when you went to --
21 when you were working at headquarters?

22 MR. BENNETT: Objection. Form.

23 THE WITNESS: When I went back
24 to headquarters, it was the deputy
25 chief of liaison and policy first.

1 QUESTIONS BY MS. MCCLURE:

2 Q. Okay. Thank you.

3 In 2005, who was the head of
4 the Office of Diversion Control?

5 A. I'm not certain. It could have
6 been one of a couple of different people.

7 Q. Was Bill Walker one of those
8 couple of different people?

9 A. Yes.

10 Q. Who else could it have been?

11 A. Joe Rannazzisi.

12 Q. You just don't recall when the
13 transition happened?

14 A. Correct.

15 Q. Did Joe Rannazzisi take over
16 that role from Bill Walker?

17 A. Yes.

18 Q. Okay. No one in between,
19 correct?

20 A. Correct.

21 Q. Did you work with Joe
22 Rannazzisi in that time period?

23 A. I did.

24 Q. Did you report to him?

25 A. I did.

1 Q. And this is in the role as
2 chief of liaison and policy or chief of the
3 E-Commerce section?

4 A. Either E-Commerce or the
5 regulatory section. I'm not sure exactly
6 when he came in.

7 Q. Right.

8 So he was not the head of the
9 Office of Diversion when you were chief of
10 liaison and policy?

11 A. No, that was Laura Nagel.

12 Q. But you don't recall whether
13 you reported to him in your role as chief of
14 E-Commerce or chief of regulatory section or
15 both?

16 A. I did, as chief of regulatory
17 section, report to Joe Rannazzisi, but I'm
18 not sure in E-Commerce who it was.

19 Q. Now, you previously talked
20 about your role in -- do I have it --
21 planning and budget?

22 Do I have that title correct?
23 Probably not.

24 A. It was planning and resources.

25 Q. Planning and resources.

1 There's two different sides to
2 DEA, correct?

3 A. Yes.

4 MR. BENNETT: Objection. Form.
5 You can answer.

6 QUESTIONS BY MS. MCCLURE:

7 Q. And is there some other word
8 that you would use to refer to them other
9 than "sides"?

10 A. Well, there is the diversion
11 part of DEA, there's enforcement, there's
12 intelligence, there's laboratories. So
13 there's several different aspects to DEA.

14 Q. So you said diversion,
15 enforcement, lab --

16 A. Intelligence, laboratories.

17 Q. Is diversion funded differently
18 than enforcement?

19 A. It is.

20 Q. How is that funding different?

21 A. It's paid for through a fee
22 account by fees paid by the registrants to
23 register.

24 Q. You said there's the laboratory
25 section and the intelligence section.

1 Do laboratories and
2 intelligence support both enforcement and
3 diversion, or do they support one or the
4 other?

5 MR. BENNETT: Objection.

6 Scope.

7 You can answer.

8 THE WITNESS: Yes, both.

9 QUESTIONS BY MS. MCCLURE:

10 Q. And how is enforcement funded?

11 MR. BENNETT: Objection.

12 Scope.

13 THE WITNESS: Through
14 Congressional appropriations.

15 QUESTIONS BY MS. MCCLURE:

16 Q. What is on-call time, if you
17 know?

18 A. I don't know.

19 Q. Okay. That's not something
20 that happened in the diversion side?

21 A. No, it's nothing I've heard of.

22 Q. So if diversion is funded by
23 fee accounts paid for by registrants, the
24 fees that are set for registrants are at
25 DEA's discretion and under DEA's control; is

1 that right?

2 MR. BENNETT: Objection.

3 Scope.

4 THE WITNESS: They're set
5 through a rulemaking process.

6 QUESTIONS BY MS. MCCLURE:

7 Q. That includes input from DEA?

8 A. Yes.

9 MS. MCCLURE: Why don't we go
10 off the record and take a short break.

11 MR. BENNETT: Okay.

12 VIDEOGRAPHER: We're going off
13 record. The time is 10:49.

14 (Off the record at 10:49 a.m.)

15 VIDEOGRAPHER: We're going back
16 on record, beginning Media File
17 Number 2. The time is 11:06.

18 QUESTIONS BY MS. MCCLURE:

19 Q. Still good morning, Mr. Mapes.
20 You understand that you're
21 still under oath today?

22 A. I do.

23 Q. What is the role of a wholesale
24 distributor?

25 A. To distribute drugs and other

1 products to the retail pharmacies and doctors
2 and anyone else that has a need for them, if
3 it's registered, if it's a controlled
4 substance.

5 Q. So distributors and wholesalers
6 sell more than just controlled substances?

7 A. Yes.

8 Q. A whole variety of products?

9 A. Yes.

10 Q. Do you understand the use of
11 the term "distributors" and "wholesalers," do
12 you use that interchangeably, or do you think
13 of those as being different words?

14 A. Interchangeable.

15 Q. Do distributors sell
16 pharmaceutical products directly to patients?

17 A. No.

18 Q. So they sell to other
19 registrants within the supply chain, whether
20 it's a retail pharmacy, a hospital customer,
21 a physician, et cetera, right?

22 A. Correct.

23 Q. So prescriptions are written by
24 doctors?

25 MR. BENNETT: Objection. Form.

1 QUESTIONS BY MS. MCCLURE:

2 Q. In your knowledge?

3 A. Among others.

4 Q. Other health care professionals
5 write a prescription, correct?

6 A. Correct.

7 Q. And then a patient takes that
8 prescription generally to a pharmacy or to
9 some other entity who is a registered -- if
10 it's a controlled substance within the supply
11 chain?

12 A. Yes.

13 Q. But not a wholesaler or a
14 distributor?

15 A. Correct.

16 Q. And so an order that a
17 wholesaler or a distributor receives from,
18 say, a pharmacy is generally a bulk order,
19 correct?

20 A. Yes.

21 Q. It's not intended to be -- it's
22 not as if a pharmacy places an order to fill
23 a specific person's prescription most
24 commonly, right?

25 A. Correct.

1 Q. Instead, the pharmacy or the
2 person ordering from the wholesaler has
3 grouped together an anticipated need for a
4 particular medication, and they order that in
5 bulk from a distributor, right?

6 MR. BENNETT: Objection. Form.

7 THE WITNESS: Correct.

8 QUESTIONS BY MS. MCCLURE:

9 Q. So an order is not being filled
10 in response to a particular patient's
11 prescription?

12 A. Not normally.

13 Q. Is it your understanding that
14 distributors do not see prescription-level
15 data in the ordinary course of doing their
16 day-to-day business of filling orders placed
17 by other -- by their customers?

18 MR. BENNETT: Objection. Form.

19 THE WITNESS: They may see
20 prescription-level data when they're
21 establishing new customers or when
22 they're reviewing what's going on at a
23 pharmacy, but not when filling every
24 order.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. In your experience,
3 distributors conduct due diligence on new
4 customers that they're considering bringing
5 on board, correct?

6 A. Yes.

7 Q. And is it in that context that
8 they may see some prescription-level data?

9 A. That's one of the reasons they
10 would.

11 Q. And how would the distributor
12 obtain that data in that new customer
13 situation?

14 A. By visiting the pharmacy and
15 asking to see information about how many
16 prescriptions, what drugs, frequency, that
17 kind of thing.

18 Q. So they would request it?

19 A. Yes.

20 Q. And then you also mentioned
21 that in a, what I will call, ongoing due
22 diligence situation when a customer is
23 already a customer and you're evaluating
24 whether there's some concern or problem with
25 that customer, a distributor may obtain

1 prescription-level data?

2 A. Correct.

3 Q. During your time at DEA, you
4 became familiar with the regulation regarding
5 the identification and reporting of
6 suspicious orders?

7 A. Yes.

8 Q. To your knowledge, has that
9 regulation changed since it was issued or
10 promulgated?

11 A. Not that I'm aware of.

12 Q. Is that something that you
13 believe you would have been aware of in your
14 course of employment at DEA and your
15 subsequent employment?

16 A. Probably.

17 (Mapes Exhibit 3 marked for
18 identification.)

19 QUESTIONS BY MS. MCCLURE:

20 Q. Okay. I'll hand you what's
21 been marked as 3.

22 If you could take a look at
23 that and let me know when you've had a chance
24 to look through it.

25 A. I've reviewed it.

1 Q. So when we're talking about the
2 regulation regarding to the identification
3 and reporting of suspicious orders, which
4 section of this Exhibit 3 are we talking
5 about?

6 A. Suspicious orders ends in
7 1301.74(b) .

8 Q. And 1301.74(b) defines a
9 suspicious order to include orders of unusual
10 size, orders deviating substantially from a
11 normal pattern and orders of unusual
12 frequency, right?

13 A. Yes.

14 Q. Does the regulation explain to
15 a registrant how to identify an order of
16 unusual size?

17 MR. BENNETT: Objection. Form.

18 THE WITNESS: It does not.

19 QUESTIONS BY MS. MCCLURE:

20 Q. Does the regulation explain to
21 a registrant how to identify an order of
22 unusual frequency?

23 MR. BENNETT: Objection. Form.

24 THE WITNESS: It does not.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. Does the regulation explain to
3 a registrant how to identify an order that
4 deviates substantially from a normal pattern?

5 MR. BENNETT: Objection. Form.

6 THE WITNESS: It does not.

7 QUESTIONS BY MS. MCCLURE:

8 Q. Registrants are responsible for
9 designing their own suspicious order
10 monitoring systems; is that correct?

11 A. It is.

12 Q. Is a registrant to take into
13 account considerations that are unique to
14 them in designing such a system, for example,
15 their customer base?

16 A. Yes.

17 Q. So would one registrant
18 potentially have a different-looking or
19 different nature of a customer base than
20 another registrant?

21 A. Yes.

22 Q. Is it possible that those
23 registrants would then have designed
24 different suspicious order monitoring
25 systems?

1 A. It's possible.

2 Q. Is there a holy grail or
3 articulated DEA model standard for what
4 constitutes a suspicious order?

5 MR. BENNETT: Objection. Form.

6 THE WITNESS: Not that I'm
7 aware of.

8 QUESTIONS BY MS. MCCLURE:

9 Q. And you've spent your 30-year
10 career in DEA in diversion-related roles?

11 A. Yes.

12 Q. Does DEA define for registrants
13 what essential features are that every
14 suspicious order monitoring system must have
15 to be compliant?

16 MR. BENNETT: You can answer.

17 THE WITNESS: They may talk
18 with industry or with industry
19 associations about those kind of
20 things or answer specific questions
21 from a registrant.

22 QUESTIONS BY MS. MCCLURE:

23 Q. So in your experience, DEA may
24 answer a specific question from a registrant
25 about a possible feature that that registrant

1 is considering for its suspicious order
2 monitoring system and provide information to
3 that registrant as to whether that feature
4 would be compliant --

5 MR. BENNETT: Objection.

6 QUESTIONS BY MS. MCCLURE:

7 Q. -- with the Controlled
8 Substances Act?

9 MR. BENNETT: Objection.

10 Incomplete hypothetical.

11 You can answer.

12 THE WITNESS: Yes.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Tell me more about what you
15 know about that.

16 A. If a registrant asks a specific
17 question, if having a particular part of a
18 system is appropriate, they could give their
19 opinion about whether that's appropriate as
20 part of a system.

21 Q. But does DEA mandate that
22 certain features must be included by every
23 registrant within suspicious order monitoring
24 systems?

25 A. No.

1 Q. So, for example, in your
2 experience, would DEA instruct registrants
3 that to be compliant, a suspicious order
4 monitoring system must compare orders to
5 orders received from other similarly sized
6 pharmacies within a geographic area?

7 MR. BENNETT: Objection.

8 Vague. Incomplete hypothetical.

9 Scope.

10 You can answer within the
11 limits of scope letter, if you can.

12 THE WITNESS: DEA looks at them
13 one registrant at a time, so they're
14 not telling them to compare them with
15 other registrants. Looking at each
16 registrant uniquely.

17 QUESTIONS BY MS. MCCLURE:

18 Q. And is that because DEA affords
19 registrants the discretion to design a
20 compliant suspicious order monitoring?

21 MR. BENNETT: Objection.

22 Scope.

23 You are not here to speak on
24 behalf of DEA. You may speak in your
25 personal capacity.

1 THE WITNESS: I'm now confused
2 about what the question was.

3 QUESTIONS BY MS. MCCLURE:

4 Q. No problem.

5 In your experience, DEA affords
6 registrants the discretion to design a
7 suspicious order monitoring system that is
8 effective?

9 MR. BENNETT: Same objection.
10 You may answer --

11 THE WITNESS: Yes.

12 MR. BENNETT: -- in your
13 personal capacity.

14 QUESTIONS BY MS. MCCLURE:

15 Q. And so if I have this correct,
16 DEA will advise as to a specific feature when
17 requested, when information is requested by a
18 registrant, but will not put together a list
19 of the mandated features that every
20 suspicious order monitoring system must
21 include in order to be compliant.

22 Do I have that correct?

23 A. I have talked with registrants
24 in the past about specific aspects of their
25 system in giving them advice. I'm not sure

1 if DEA is currently doing that or not.

2 Q. When you say you have "talked
3 with registrants in the past about specific
4 aspects of their system in giving them
5 advice," is that in your capacity at DEA?

6 A. Yes.

7 Q. But in your experience, DEA
8 does not publish, put forth, any sort of list
9 of mandated requirements that must be in a
10 suspicious order monitoring system in order
11 for that system to be effective or compliant?

12 A. I haven't seen one.

13 Q. If you haven't seen a written
14 list, are you aware of some informal list --

15 A. No.

16 Q. -- of features --

17 A. No, I'm not.

18 Q. -- that DEA mandates be
19 included in every suspicious order monitoring
20 system?

21 MR. BENNETT: Let her finish
22 the question first.

23 THE WITNESS: Okay.

24 No.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. If a former DEA diversion
3 investigator identified a number of features
4 that must be included in a suspicious order
5 monitoring system in order for it to be
6 compliant, would that match with your
7 experience at DEA?

8 MR. BENNETT: Objection.

9 Scope. Incomplete hypothetical and
10 vague.

11 You can answer in your personal
12 capacity but not on behalf of DEA.

13 THE WITNESS: I'm not aware of
14 any that we've had, so it wouldn't be
15 consistent with what I have seen.

16 QUESTIONS BY MS. MCCLURE:

17 Q. It would not be consistent with
18 what you've seen or experienced in your time
19 at DEA?

20 A. That's correct.

21 Q. Do you agree that there -- that
22 the review of an order to determine whether
23 it is suspicious or not is a subjective one?

24 MR. BENNETT: Objection.

25 Vague.

1 You can answer.

2 THE WITNESS: Yes.

3 QUESTIONS BY MS. MCCLURE:

4 Q. Meaning that the individual or
5 entity reviewing that order takes into
6 account the totality of the circumstances and
7 makes a determination as to whether that
8 order is or is not a suspicious order; is
9 that right?

10 A. Yes.

11 Q. Have you heard the phrase
12 "totality of circumstances" previously in the
13 course of your tenure at DEA?

14 A. I have.

15 Q. Do you recall in what context
16 you've heard that?

17 A. Discussing suspicious orders.

18 Q. And is that a phrase that's
19 used commonly within DEA or the industry
20 regarding reporting suspicious orders?

21 A. I don't know that it's common.

22 Q. Regardless -- okay.

23 You've heard the term "totality
24 of the circumstances" before?

25 A. Yes.

1 Q. Okay. And as we discussed
2 previously, each customer -- or I'm sorry,
3 each registrant has a different customer
4 base, right?

5 A. Correct.

6 Q. No customer -- or no
7 registrant's customer base will exactly match
8 that of another registrant?

9 A. Correct.

10 Q. And so the information
11 available to one registrant regarding whether
12 an order -- let me strike that and start
13 over.

14 The information available to
15 one registrant about a particular order and
16 the customer placing it might be different
17 than the information available to another
18 registrant?

19 A. And you're using -- I don't
20 quite understand the question yet.

21 Q. Okay. We've talked about how
22 registrants have different customer bases,
23 right?

24 A. Yes.

25 Q. And so when a registrant or a

1 wholesaler in this case is evaluating an
2 order and trying to determine whether it's
3 suspicious or not --

4 Are you with me?

5 A. Uh-huh. Yes.

6 Q. -- the information that
7 Registrant A may have about that order or
8 that customer may be different than the
9 information that is available to
10 Registrant B?

11 MR. BENNETT: Objection.

12 Vague. Incomplete hypothetical.

13 THE WITNESS: Yes, they may be
14 different.

15 QUESTIONS BY MS. MCCLURE:

16 Q. Each registrant conducts its
17 own due diligence?

18 A. They should.

19 Q. To your knowledge, they should,
20 right?

21 A. Yes.

22 Q. So do registrants, in your
23 experience, share due diligence files?

24 A. No.

25 Q. Does the regulation -- I'm

1 looking back at Mapes Exhibit 3 -- define the
2 form or format that a suspicious order report
3 must take?

4 A. It does not.

5 Q. Does it say what information is
6 supposed to be provided to DEA?

7 A. No, it doesn't.

8 Q. Does the regulation in Mapes
9 Exhibit 3 say anything about whether a
10 registrant can ship a suspicious order?

11 MR. BENNETT: Objection. Form.

12 THE WITNESS: No, it doesn't.

13 QUESTIONS BY MS. MCCLURE:

14 Q. And this section of the
15 regulation, 1301.74(b), it has not changed
16 since 1971?

17 A. I'm not aware of any changes.

18 Q. Are you familiar with excessive
19 purchase reports?

20 A. Yes.

21 Q. What are they?

22 A. Reports that are sent by
23 wholesalers of purchases of controlled
24 substances that they, after the fact, think
25 may be excessive.

1 Q. Was the submission of excessive
2 purchase reports, in your experience,
3 standard practice in the industry?

4 A. It was.

5 Q. Was there a particular time
6 that you believe, in your experience, it was
7 standard practice in the industry to submit
8 those?

9 A. From the time I started with
10 DEA in 1977 until we had the meetings with
11 the individual wholesalers, that was the --
12 the standard practice, to submit those.

13 Q. And in your experience, DEA
14 reviewed those reports as compliant with the
15 Controlled Substances Act?

16 MR. BENNETT: Objection.

17 Scope.

18 This is not a 30(b)(6) witness
19 who can speak on behalf of DEA.

20 You may answer in your personal
21 capacity within the limits of the
22 scope letter.

23 THE WITNESS: Yeah, I viewed
24 those as compliant with the regulation
25 for suspicious orders.

1 QUESTIONS BY MS. MCCLURE:

2 Q. And in your experience of
3 conducting audits of distribution centers,
4 that was one of your roles as a diversion
5 investigator, right?

6 A. Yes.

7 Q. Conducting audits?

8 A. Yes.

9 Q. And as a group supervisor, you
10 would oversee diversion investigators who
11 were conducting audits?

12 A. That's correct.

13 Q. And that would include a review
14 of their suspicious order monitoring systems?

15 A. That's correct.

16 Q. Including the formats that they
17 were using to submit and how they were
18 identifying and reporting suspicious orders
19 to DEA?

20 A. Correct.

21 Q. And in the course of your role
22 as a diversion investigator and a group
23 supervisor, you accepted these excessive
24 purchase reports as compliant with the
25 Controlled Substances Act?

1 MR. BENNETT: You can answer
2 that.

3 THE WITNESS: Yes.

4 QUESTIONS BY MS. MCCLURE:

5 Q. You don't recall saying to
6 anyone, "Hey, you can't submit these kinds of
7 documents" in the course of your roles as a
8 diversion investigator or a group supervisor?

9 MR. BENNETT: Objection.
10 Scope.

11 You are not authorized to
12 disclose information regarding any
13 specific DEA investigations or
14 activities.

15 You may answer this question
16 yes or no on whether you remember
17 saying that.

18 THE WITNESS: Can you repeat
19 the question?

20 QUESTIONS BY MS. MCCLURE:

21 Q. I can.

22 You don't recall saying to
23 anyone, a registrant, for example, "You can't
24 submit these kinds of excessive purchase
25 reports and still be compliant with the

1 Controlled Substances Act" in your role as a
2 diversion investigator or a group supervisor?

3 MR. BENNETT: Same objection.

4 You can answer.

5 THE WITNESS: No, I don't
6 remember saying that.

7 QUESTIONS BY MS. MCCLURE:

8 Q. And we've been talking about
9 excessive purchase reports, but sometimes
10 people -- registrants would call them by
11 different names.

12 Do you recall that, or in your
13 experience were they all called excessive
14 purchase reports?

15 A. Generally referred to as
16 excessive purchase reports. Could be called
17 suspicious order reports.

18 Q. And were they generally in a
19 similar format across the industry?

20 MR. BENNETT: Objection. Form.
21 Vague.

22 You can answer it.

23 QUESTIONS BY MS. MCCLURE:

24 Q. Do you understand my question?

25 A. Yes.

1 They were in different formats
2 depending on the company that was sending
3 them. Some would send computer printouts.
4 Some would send copies of invoices. So there
5 are different ways that they were sent.

6 Q. They generally provided the
7 same kind of information?

8 A. Yes.

9 Q. About purchases and sales that
10 had already happened?

11 A. Correct.

12 Q. And DEA accepted those?

13 MR. BENNETT: Objection.

14 QUESTIONS BY MS. MCCLURE:

15 Q. In your personal experience?

16 MR. BENNETT: Scope.

17 You're not here as a 30(b)(6)
18 witness to answer on behalf of DEA.

19 You may answer in your personal
20 capacity of what you did.

21 THE WITNESS: Yes, we accepted
22 those.

23 MR. LANIER: Did he say -- I'm
24 trying to be careful -- "we" after you
25 told him not to speak for the DEA but

1 himself?

2 MS. MCCLURE: Mark --

3 MR. BENNETT: I believe that
4 was his testimony, yes.

5 MS. MCCLURE: That is his
6 testimony.

7 MR. LANIER: Okay.

8 QUESTIONS BY MS. MCCLURE:

9 Q. So in your personal experience,
10 were you the only one who accepted these?

11 MR. BENNETT: You can answer.

12 THE WITNESS: No other groups
13 accepted the same type of reports.

14 QUESTIONS BY MS. MCCLURE:

15 Q. So saying "we" is referring to
16 you and those other groups, right?

17 A. The others that I was
18 supervising at the time.

19 Q. So in the course of your role
20 as a diversion investigator, as well as the
21 time when you acted as a group supervisor and
22 had diversion investigators reporting to you,
23 yes?

24 A. Yes.

25 Q. Are you aware of DEA

1 headquarters approving particular suspicious
2 order monitoring systems submitted by a
3 registrant at any time in your experience at
4 DEA?

5 MR. BENNETT: Objection. Form.
6 You can answer.

7 THE WITNESS: I do recall one
8 time that I was in headquarters and we
9 received a letter from a wholesaler
10 about their suspicious order
11 monitoring program, and we told them
12 that it did comply with the
13 requirements in the regulation.

14 QUESTIONS BY MS. MCCLURE:

15 Q. What role were you in when you
16 received that letter?

17 A. The deputy chief of liaison and
18 policy.

19 Q. And when you say "we" received
20 that letter, were you personally involved
21 with the approval of that suspicious order
22 monitoring system?

23 MR. BENNETT: You can answer.

24 THE WITNESS: Yes.
25

1 QUESTIONS BY MS. MCCLURE:

2 Q. Who else is encompassed within
3 that "we" that you've provided?

4 A. A staff coordinator that
5 reviewed the incoming correspondence from the
6 company, drafted the response to the company
7 and then sent it to me for approval, or in
8 this case signature, to send it to the
9 company.

10 Q. Did you sign that?

11 A. Yes.

12 Q. And what company was that?

13 A. AmerisourceBergen.

14 Q. Can you think of any other
15 instances in which you have a personal
16 recollection of DEA's approval of a
17 suspicious order monitoring system?

18 A. No, I cannot.

19 (Mapes Exhibit 4 marked for
20 identification.)

21 QUESTIONS BY MS. MCCLURE:

22 Q. I'm going to mark an exhibit as
23 4. This is a series of letters exchanged,
24 and they're all going to be amalgamated as
25 one exhibit for today.

1 If you could take a look
2 through those letters and let me know when
3 you've had a chance to review them.

4 A. Okay. I've generally reviewed
5 them.

6 Q. Now, when I was previously
7 asking you about approvals, you recalled a
8 situation in which you had signed a letter to
9 AmerisourceBergen.

10 Is that a different set of
11 letters or a letter that is not this set
12 that's marked as Exhibit 4?

13 A. Yes, it's not included in here.

14 Q. Okay. So let me back up.

15 This set of letters is dated in
16 the '96 to '98 time period, right? Over a
17 time span through '96, '97, and then ending
18 in June 23rd -- I'm sorry, July 23, '98,
19 right?

20 A. Correct.

21 Q. And these are exchanged between
22 the Department of Justice, DEA Enforcement
23 Administration -- I'm sorry, the Drug
24 Enforcement Administration and Chris
25 Zimmerman at Bergen, right?

1 A. Correct.

2 Q. So not AmerisourceBergen
3 because this predated the merger with
4 Amerisource.

5 Are you aware of that?

6 MR. BENNETT: Objection. Form.

7 THE WITNESS: Could you restate
8 the question?

9 QUESTIONS BY MS. MCCLURE:

10 Q. Yes, I can.

11 As of 1998, Bergen was a
12 separate company from Amerisource.

13 Do you know that, or am I
14 telling you --

15 A. Yes.

16 Q. You are aware of that?

17 A. Yes, I am.

18 Q. Okay. You previously told me
19 you had signed a letter approving a system
20 that AmerisourceBergen had.

21 Was that a later letter that
22 was subsequent to the 2001 merger between
23 Amerisource and Bergen, or was that a letter
24 that you recall being part of this exchange
25 with Bergen?

1 A. It was subsequent to this. It
2 was after the merger of Amerisource and
3 Bergen.

4 Q. Do you recall the approximate
5 time period of the approval letter that you
6 recall signing regarding AmerisourceBergen's
7 suspicious order monitoring program that had
8 to have been after 2001, which was the merger
9 of those two companies?

10 MR. BENNETT: Objection. Form.

11 THE WITNESS: No, I don't
12 recall the time frame.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Can we agree it would have --
15 you recall it being AmerisourceBergen, so
16 after the merger in 2001, if I'm telling you
17 the correct date of the merger, right?

18 A. Yes.

19 Q. Would it have been prior to
20 2007, which is when there was a settlement
21 and release agreement executed between DEA
22 and AmerisourceBergen?

23 A. Yes.

24 Q. So sometime in between 2001 and
25 2007, you recall a different exchange of

1 letters that is not reflected here in Mapes
2 Exhibit 4 in which you signed a document, a
3 letter, approving AmerisourceBergen's
4 suspicious order monitoring system?

5 A. That's correct.

6 Q. In your experience at DEA,
7 would letters approving suspicious order
8 monitoring systems be things that were
9 retained, kept by DEA?

10 MR. BENNETT: Objection.

11 Scope. Calls for speculation.

12 You can answer.

13 THE WITNESS: Generally all
14 correspondence was retained.

15 QUESTIONS BY MS. MCCLURE:

16 Q. Okay. So is it reasonable to
17 think that a letter approving a suspicious
18 order monitoring system, of which you can
19 only recall one instance of it happening,
20 would be something that would be retained by
21 DEA?

22 MR. BENNETT: Objection.

23 Scope. Calls for speculation.

24 You can answer.

25 THE WITNESS: Yes.

1 QUESTIONS BY MS. MCCLURE:

2 Q. So you don't recall when in
3 between '01 and '07 this would have been?

4 A. It would have been while I was
5 deputy chief of the liaison and policy
6 section, so it would have been during that
7 time frame.

8 Q. And would you be so kind as to
9 remind me to the best of your recollection
10 when that time frame was?

11 MR. BENNETT: Objection. Asked
12 and answered.

13 MS. MCCLURE: Yeah, it is asked
14 and answered.

15 MR. BENNETT: You can answer.

16 MS. MCCLURE: I just don't
17 remember.

18 MR. BENNETT: You can answer
19 again.

20 QUESTIONS BY MS. MCCLURE:

21 Q. Was that approximate --

22 MR. BENNETT: Wait a second.

23 MS. MCCLURE: Okay.

24 MR. BENNETT: You have a
25 question pending.

1 MS. MCCLURE: Yeah, I have a
2 question pending, you're right.

3 THE WITNESS: I can't recall
4 the exact dates of that.

5 QUESTIONS BY MS. MCCLURE:

6 Q. But that was immediately prior
7 to you becoming chief of the E-Commerce
8 section in 2004?

9 A. No, it was immediately prior to
10 me becoming chief of the administrative
11 section.

12 Q. Planning and resources?

13 A. The planning and resources
14 section.

15 Q. And you did that from
16 approximately 2003 to 2004 as to your prior
17 testimony?

18 A. Correct.

19 Q. So can we limit the time period
20 for when this letter would have been as
21 sometime between 2001 and then 2003 when you
22 took over the chief of the planning and
23 resources section?

24 A. Yes.

25 Q. Division? Section?

1 A. Section.

2 Q. Section.

3 Okay. So between '01 and '03.

4 Understanding you've been gone
5 from DEA since 2007, do you have a copy of
6 this letter in your personal possession?

7 A. No.

8 Q. Do you recall to whom you sent
9 this letter approving of AmerisourceBergen's
10 suspicious order monitoring system sometime
11 between 2001 and 2003?

12 A. To Chris Zimmerman at
13 AmerisourceBergen.

14 Q. How did that letter come about?
15 What led to you -- strike that.

16 What led to you issuing that
17 letter?

18 MR. BENNETT: Objection.

19 Scope.

20 You are not authorized to
21 disclose the internal deliberative
22 process of the Department of Justice
23 or any attorney-client communication
24 or privileged conversations.

25 To the extent you can answer

1 the question without disclosing that
2 information, you may answer.

3 THE WITNESS: It was in
4 response to a letter from
5 AmerisourceBergen.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Was that letter from
8 AmerisourceBergen from Chris Zimmerman?

9 A. It was.

10 Q. Did you know Chris Zimmerman at
11 the time -- in this 2001 to 2003 time period?

12 A. No.

13 Q. And you said you recall a staff
14 coordinator passing that letter on to you for
15 evaluation?

16 A. To review, yes.

17 Q. What do you recall, if
18 anything, doing to evaluate the request?

19 A. I don't --

20 MR. BENNETT: Objection. Same
21 instruction regarding the internal
22 deliberative process.

23 You can answer.

24 THE WITNESS: I don't recall.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. But you do recall that the end
3 conclusion that you reached was to issue a
4 letter back to Chris Zimmerman at
5 AmerisourceBergen approving of the suspicious
6 order monitoring system?

7 A. That's correct.

8 Q. The letters I showed you, which
9 are Mapes Exhibit 4, do you recall whether
10 you reviewed those letters in evaluating
11 Chris Zimmerman's 2001 to 2003, somewhere in
12 that time period, letter he sent to you on
13 behalf of AmerisourceBergen?

14 MR. BENNETT: Objection.

15 Scope.

16 You can answer that question
17 yes or no only, if you remember.

18 THE WITNESS: I don't recall.

19 QUESTIONS BY MS. MCCLURE:

20 Q. Do you recall if you were aware
21 of these letters, meaning Mapes Exhibit 4,
22 when you evaluated the subsequent 2001 to
23 2003 request from Chris Zimmerman for
24 approval of the AmerisourceBergen Drug
25 Corporation suspicious order monitoring

1 system?

2 A. I don't recall seeing these
3 when I was looking at that other letter.

4 Q. Meaning that you don't know if
5 you did or not or -- let me ask you.

6 You don't know if you reviewed
7 these letters or not when you evaluated that
8 letter?

9 A. I don't believe that I did, but
10 I don't know.

11 Q. You don't know for certain?

12 A. That's correct.

13 Q. Is this the first time that
14 you've ever seen the letters that are
15 reflected as Mapes Exhibit 4, when I've shown
16 them to you, or have you seen them prior to
17 today?

18 A. I don't recall seeing any of
19 these letters before.

20 Q. It's possible you may have in
21 the course of your time at DEA or in
22 consulting with AmerisourceBergen, but
23 sitting here today, you don't recall; is that
24 correct?

25 MR. BENNETT: Objection.

1 You can answer.

2 Form.

3 You can answer.

4 THE WITNESS: Yeah, I don't
5 recall seeing them before.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Did you take over the chief of
8 liaison and policy section role from Patricia
9 Good?

10 A. No.

11 Q. Who was previously in that role
12 when you took it over?

13 A. I was the deputy chief of
14 liaison and policy working with Patricia.

15 Q. I apologize.

16 So in this 2001 to 2003 time
17 frame when you issued this letter approving
18 of AmerisourceBergen's suspicious order
19 monitoring system, at that time you were
20 reporting to Patricia Good?

21 A. Yes.

22 Q. Okay. Was Thomas Gitchel the
23 immediate prior chief of liaison and policy
24 prior to Patricia Good, to your knowledge?

25 A. Yes, he was.

1 MS. MCCLURE: Go off the
2 record.

3 VIDEOGRAPHER: Going off the
4 record. The time is 11:52.

5 (Off the record at 11:52 a.m.)

6 MR. LANIER: And the reason
7 I've asked to go back on the record is
8 because you are asking for production
9 of this letter that you clearly had
10 some indication, as you asked your
11 questions, might exist. You have
12 asked for the letter, and it has not
13 been produced by them.

14 But by my recollection, and I'm
15 having our people search diligently,
16 it's not been presented by y'all,
17 either.

18 MS. MCCLURE: Well, agreed.

19 SPECIAL MASTER COHEN: Why
20 don't we --

21 MR. LANIER: If you've got that
22 letter --

23 MS. MCCLURE: I thought he was
24 finished.

25 MR. LANIER: If you've got that

1 letter, you have not produced it prior
2 to this deposition. That's
3 outrageous.

4 MS. MCCLURE: Mr. Lanier, I,
5 sitting here today, am not aware of
6 that letter.

7 To the extent that you believe
8 that my questions, quote, clearly have
9 some indication that I'm aware of the
10 letter existing, that is false.

11 MR. LANIER: Okay. As long as
12 you'll state on the record you had no
13 clue that that letter exists --

14 MS. MCCLURE: Didn't I just do
15 that?

16 MR. LANIER: That's fine. I'll
17 accept that from you.

18 And I'll also accept that you
19 think your client's done a diligent
20 search and your client doesn't have
21 the letter or they sure would have
22 produced it because it's absolutely
23 subject to a lot of requests.

24 MS. MCCLURE: Do you think that
25 that letter would have been in the

1 best interests of my client to produce
2 had we located it?

3 SPECIAL MASTER COHEN: Don't
4 need to argue amongst each other.

5 MS. MCCLURE: Regardless,
6 Mr. Bennett, as we discussed off the
7 record and we will now memorialize on
8 the record, the defendants -- I do not
9 have the Touhy request in front of me.
10 Nevertheless, I believe it's fairly
11 obvious and not disputable that such
12 an approval letter of
13 AmerisourceBergen's 2000 -- some --
14 such an approval letter from DEA to
15 AmerisourceBergen sometime between the
16 2001-2003 time period, executed and
17 signed by Mr. Mapes, as he has
18 testified here today, would be
19 included within the scope of the
20 requests that the defendants have
21 made.

22 I would request that DEA search
23 for and produce that letter to the
24 extent it can be located.

25 Mr. Mapes has testified that in

1 his experience such a letter would
2 have been retained by DEA, similar to
3 the letter that DEA did produce to
4 AmerisourceBergen dated July 23, 1998,
5 issued to Bergen Brunswig and having a
6 subject at the bottom of it called
7 "Approved Suspicious Order Monitoring
8 System, US-DEA-00025671."

9 I would also request that for
10 the convenience of the witness that
11 search be conducted promptly, because
12 I will state now on the record that to
13 the extent the letter is produced
14 subsequent to Mr. Mapes deposition,
15 I'm in the unfortunate position, and
16 apologize to Mr. Mapes for doing this,
17 but we would request that his
18 deposition, to the extent it's not
19 produced today or tomorrow, be
20 reconvened to -- for the purpose of
21 questioning regarding that letter.

22 MR. BENNETT: Counsel, I can
23 tell you that DEA did do a diligent
24 search for records responsive to the
25 requests that, in particular, the

1 defense sent. It has produced a
2 number of documents.

3 I have never seen the document
4 that was Mr. Mapes referenced, and to
5 the best of my knowledge, that was
6 never collected in the DEA's search
7 process and was not being withheld.

8 I would ask DEA to do a search.

9 I do want the parties to
10 understand that there are retention
11 schedules and documents are, in the
12 normal course of a government agency,
13 not retained beyond certain periods of
14 time.

15 I do not know whether a
16 retention schedule would have applied
17 to this document and whether or not
18 it -- how long it would have been
19 retained. But I will ask DEA to look
20 for the document, and we'll make a
21 determination whether or not it can be
22 released or whether it needs to be
23 redacted and released.

24 MS. MCCLURE: Regardless --

25 MR. BENNETT: I will make that

1 at our next break.

2 MS. MCCLURE: Regardless, what
3 I would ask in terms of whether the
4 document can be produced or would have
5 to be redacted, what I do ask is if
6 their document located and it is being
7 withheld, in other words, not just
8 redacted and produced in redacted
9 form, if the document is being
10 withheld, we would ask that you
11 confirm the existence of the document
12 and explain what the reason is --

13 MR. BENNETT: Of course.

14 MS. MCCLURE: -- that you
15 believe it should be withheld, not
16 simply withhold the document.

17 MR. BENNETT: Of course.

18 Yes, I mean, I think we have to
19 do a privilege log for any documents
20 we withhold, so...

21 But at our next break, I will
22 send an e-mail to DEA to see if they
23 can locate it.

24 MS. MCCLURE: Thank you.

25 Mr. Mapes, apologies for the --

1 VIDEOGRAPHER: Go back on the
2 video?

3 MS. MCCLURE: Yes, let's go
4 back on video.

5 VIDEOGRAPHER: Going back on
6 video. Beginning of Media File 3.
7 The time is 11:59.

8 QUESTIONS BY MS. MCCLURE:

9 Q. Mr. Mapes, thank you, and
10 apologies for the -- as we said, sometimes
11 there will be attorney sidebars and
12 discussions, so thank you for your patience
13 while we work through that.

14 A. Okay.

15 Q. Do you remember anything about
16 the program that AmerisourceBergen submitted
17 to you for -- with that request for approval
18 in that 2001 to 2003 time frame?

19 A. No, I don't remember the
20 details of it.

21 Q. Sitting here today and having
22 reviewed Mapes Exhibit 4, which discusses --
23 well, let's turn to the last document within
24 that set of documents, which begins -- the
25 little Bates numbers on the bottom say

1 319751.

2 A. Yes.

3 Q. That's a letter from Chris
4 Zimmerman at Bergen to Tom Gitchel dated
5 September 30, 1996, correct?

6 A. Yes, it is.

7 Q. And we don't need to read
8 through the entire letter, but is it your
9 understanding generally, having reviewed this
10 letter, that at the time Bergen was doing two
11 things to report a suspicious order; one was
12 monthly excessive purchase reports, correct?

13 MR. BENNETT: Objection. Form.
14 This witness lacks personal knowledge.
15 He said he'd never seen this letter
16 before.

17 QUESTIONS BY MS. MCCLURE:

18 Q. Okay. You've reviewed this
19 letter when I handed it to you a few minutes
20 ago, correct?

21 A. Correct.

22 Q. This letter -- I'm trying to
23 avoid having to go through the whole letter
24 and use up a lot of time, everyone's time,
25 here. But essentially there were two methods

1 that this letter discusses, whether you've
2 seen it before or not, that Bergen was using
3 in 1998 to report and identify suspicious
4 orders to DEA.

5 MR. BENNETT: Same -- I'm
6 sorry.

7 QUESTIONS BY MS. MCCLURE:

8 Q. One of those was the provision
9 of monthly excessive purchase reports,
10 correct?

11 MR. BENNETT: Objection. Form.
12 Lack of personal knowledge.

13 QUESTIONS BY MS. MCCLURE:

14 Q. And that's referenced on
15 page 1, paragraph 2?

16 MR. BENNETT: You can answer
17 the last question.

18 THE WITNESS: Yes, it does talk
19 about excessive purchase reports being
20 sent.

21 QUESTIONS BY MS. MCCLURE:

22 Q. And then in the next paragraph
23 it also talks about phone calls placed by
24 Bergen to DEA?

25 MR. BENNETT: Objection. Form.

1 QUESTIONS BY MS. MCCLURE:

2 Q. Correct?

3 A. Yes. Yes, it does.

4 Q. And ultimately, the proposal in
5 this letter was to prepare a daily suspicious
6 order report of completed transactions that
7 would go either via fax or some other method
8 to DEA field offices.

9 Is that your understanding
10 having read this letter?

11 MR. BENNETT: Objection. Form.

12 THE WITNESS: I'm not certain
13 that they're completed orders or sales
14 or orders that they've received, from
15 what it says here.

16 QUESTIONS BY MS. MCCLURE:

17 Q. Okay. Do you recall whether
18 the letter that you approved sometime between
19 2001 and 2003 reflected daily reports going
20 to DEA field offices from AmerisourceBergen
21 of suspicious orders?

22 A. I don't recall.

23 Q. Okay. So reviewing this letter
24 does not refresh your recollection as to what
25 it was you approved sometime between 2001 and

1 2003?

2 A. No, it does not.

3 (Mapes Exhibit 5 marked for
4 identification.)

5 QUESTIONS BY MS. MCCLURE:

6 Q. Okay. This is Mapes 5. It's a
7 single-page document.

8 Now, Mr. Mapes, on the previous
9 document I handed -- oh, let me know when
10 you've had a chance to review it. Apologies.

11 A. Okay.

12 Q. So having done a comparison,
13 this document is, I believe, the DEA's
14 version of the same letter that's attached as
15 Mapes Exhibit 4. It's produced by the DEA,
16 which we can tell because at the bottom it
17 says US-DEA-00025671.

18 Do you see that at the bottom?

19 A. Yes, I do.

20 Q. And the difference is that at
21 the bottom there's a blacked-out box which is
22 a redaction implemented by DEA, and then the
23 subject added there is "approved suspicious
24 order monitoring system."

25 Are you familiar with these

1 subjects or notations at the bottom of DEA
2 copies of letters and communications in your
3 experience at DEA?

4 MR. BENNETT: Objection.

5 Scope.

6 You may answer that question
7 yes or no only.

8 THE WITNESS: No, I'm not.

9 MS. MCCLURE: Okay. You can
10 set that aside.

11 (Mapes Exhibit 6 marked for
12 identification.)

13 QUESTIONS BY MS. MCCLURE:

14 Q. I'm going to hand you a
15 document that is marked Mapes Exhibit 6.

16 And I just realized -- I
17 apologize for the record -- I have not been
18 reading Bates numbers in. US-DEA-00001771.

19 Take a look at that and let me
20 know when you've had a chance to review it.

21 A. I've reviewed it.

22 Q. Have you seen this document
23 before?

24 A. I have.

25 Q. Did you see this document, to

1 the best of your recollection,
2 contemporaneously with it being issued in or
3 around December of 2007, or have you seen
4 this document more -- only more recently?

5 A. Only more recently.

6 Q. By "only more recently," is
7 that referencing the two meetings that you
8 had with DEA counsel to both give information
9 to them and prepare for this deposition, or
10 did you see this letter in connection with
11 your summer and fall 2018 meeting with
12 plaintiffs' counsel?

13 MR. BENNETT: Objection. Form.

14 THE WITNESS: I don't recall
15 seeing it with meetings with plaintiff
16 counsel.

17 I didn't see it at DEA because
18 I was retired before the letter was
19 sent out.

20 I did see it yesterday in
21 preparation for the deposition.

22 QUESTIONS BY MS. MCCLURE:

23 Q. To the best of your
24 recollection then, the first time you recall
25 seeing this letter was yesterday?

1 A. No, I've seen it other times
2 between the time I retired and yesterday.

3 Q. Do you recall how you saw it
4 those other times?

5 A. It was from a registrant, I
6 can't remember which one, but a registrant
7 that sent it to me that had received it from
8 DEA.

9 Q. Do you recall whether it would
10 have been shortly after this letter was sent
11 in the early course of your consulting work,
12 or was it later than that, if you can --

13 A. It was later than that.

14 Q. So it's fair to say from your
15 answers that you, it seems, did not review
16 this letter prior to it being issued, say, in
17 the last months of your tenure at DEA?

18 MR. BENNETT: Objection.

19 Scope.

20 You're not authorized to
21 disclose the internal deliberations of
22 DEA.

23 You may answer that question
24 yes or no only, whether you saw it
25 prior to leaving DEA, a draft.

1 THE WITNESS: No, I did not.

2 QUESTIONS BY MS. MCCLURE:

3 Q. If we look at paragraph 3 of
4 this letter, the second sentence says,
5 "Filing a monthly report of completed
6 transactions, e.g., excessive purchase report
7 or high unit purchases, end parens, does not
8 meet the regulatory requirement to report
9 suspicious orders."

10 Based on your experience at
11 DEA, was this a change in how DEA handled
12 suspicious order reporting?

13 MR. BENNETT: Objection.

14 Scope.

15 You're not here as a 30(b)(6)
16 witness to talk on behalf of DEA.

17 You may disclose your personal
18 knowledge regarding this topic from
19 your time at DEA, what you personally
20 did.

21 THE WITNESS: I believe from my
22 experience it was a change.

23 QUESTIONS BY MS. MCCLURE:

24 Q. Because previously in your
25 experience at DEA excessive purchase reports

1 had been accepted by DEA for suspicious order
2 reporting as you previously testified,
3 correct?

4 MR. BENNETT: Objection.

5 Scope. This is not a 30(b)(6) witness
6 that can answer on behalf of DEA.

7 You may answer what you
8 personally did while at DEA in
9 response to that question.

10 THE WITNESS: It was a change
11 that was started, from my experience,
12 when we had the meetings with
13 individual wholesalers, individual
14 distributors, starting in 2005.

15 QUESTIONS BY MS. MCCLURE:

16 Q. So in 2005, which you've just
17 referenced, you began talking with
18 distributors on something called the
19 Distributor Initiative?

20 A. That's correct.

21 Q. Whose idea was the Distributor
22 Initiative?

23 MR. BENNETT: Objection.

24 Scope. Objection.

25 You're not to disclose internal

1 deliberative process.

2 If you know of a person who
3 came up with the idea for a
4 Distributor Initiative, you may answer
5 who that person was.

6 THE WITNESS: I'm not sure I
7 can answer the question.

8 MR. BENNETT: Can we go off the
9 record for a minute?

10 MS. MCCLURE: Yeah.

11 VIDEOGRAPHER: We're going off
12 record. The time is 12:14.

13 (Off the record at 12:14 p.m.)

14 VIDEOGRAPHER: We're going back
15 on record. Beginning of Media File 4.
16 The time is 12:17.

17 MR. BENNETT: So the witness
18 can answer the question as far as the
19 people who came up with the idea.

20 In addition, we did discuss and
21 would prefer to wait until one o'clock
22 for the lunch break because we started
23 late this morning, and it would make
24 the afternoon very long if we go two
25 hours and then we have the rest of the

1 time in the afternoon.

2 So if the parties would agree,
3 we'd prefer to wait until -- take the
4 lunch break at one o'clock.

5 MS. MCCLURE: Provided that my
6 personal comfort situation will last
7 us until one o'clock, we can do that.

8 MR. BENNETT: Well, we can take
9 a quick break, but as far as the lunch
10 break goes, we'd rather wait.

11 If you want to take a comfort
12 break --

13 MS. MCCLURE: Okay. I would
14 like to take a five-minute comfort
15 break.

16 MR. BENNETT: So let's have his
17 answer. We'll take --

18 MS. MCCLURE: So let's have you
19 answer. We'll do five really short,
20 short, short five -- three to five
21 minutes and then go back on.

22 MR. BENNETT: And then we can
23 do a lunch break 1, 1:30, whatever.

24 MS. MCCLURE: Yeah. Exactly.

25 MR. BENNETT: All right. You

1 can answer the last question, based on
2 our conversation, as far as the name
3 of the individuals.

4 THE WITNESS: It was Kyle
5 Wright and myself that initiated that.

6 MS. MCCLURE: Okay. Quick
7 five-minute-or-less break.

8 VIDEOGRAPHER: Going off the
9 record. The time is 12:18.

10 (Off the record at 12:18 p.m.)

11 VIDEOGRAPHER: Going back on
12 the record. Beginning of Media
13 File 5. The time is 12:27.

14 QUESTIONS BY MS. MCCLURE:

15 Q. Okay. So Kyle Wright and
16 yourself initiated the Distributor
17 Initiative?

18 A. That's correct.

19 Q. Is it sometimes called the
20 distributor briefings?

21 A. Yes.

22 Q. Do you -- okay.

23 So those are interchangeable?

24 A. They are.

25 Q. And what was the reason that

1 you and Mr. Wright initiated the distributor
2 briefings?

3 MR. BENNETT: Objection.

4 Scope. Internal deliberative process.

5 You may answer why the
6 initiative was started but may not
7 give specifics of the deliberations.

8 THE WITNESS: It was started in
9 response to the Internet pharmacy
10 issue.

11 QUESTIONS BY MS. MCCLURE:

12 Q. What was the Internet pharmacy
13 issue?

14 A. That was when websites were
15 starting to offer their service to patients,
16 doctors and pharmacies to put the three
17 together so that patients could get a
18 prescription filled by a pharmacy after
19 completing a questionnaire on a website and
20 getting that approved by a doctor for a
21 prescription, and a pharmacy getting the
22 prescriptions and filling those and sending
23 them to the patients.

24 Q. So DEA's concern, am I right,
25 that there was not a doctor-patient

1 relationship in this scenario, the Internet
2 pharmacy situation?

3 A. That's one of the concerns,
4 yes.

5 Q. What was the other concern?
6 I'm sorry if I missed it.

7 A. That the pharmacies were
8 filling prescriptions for patients that they
9 knew nothing about, for doctors that weren't
10 within the geographic area, all for the same
11 drug.

12 Q. Okay. And this Internet
13 pharmacy issue, as you called it, was
14 concerning to DEA?

15 A. It was concerning to me, yes.

16 Q. In fact, by 2005, were Internet
17 pharmacies overwhelming DEA and exhausting
18 its resources as -- in your experience during
19 that time period?

20 MR. BENNETT: Objection.

21 Scope.

22 You may answer in your personal
23 experience and not on behalf of DEA.

24 THE WITNESS: There were a
25 significant number of investigations,

1 and the investigations are lengthy.

2 QUESTIONS BY MS. MCCLURE:

3 Q. So is that, yes, that the
4 resources needing to be devoted to the
5 Internet pharmacy issue were becoming a
6 problem or a concern?

7 A. A concern.

8 Q. A concern.

9 So you, together with
10 Mr. Wright, developed presentations for
11 distributors, correct?

12 A. That's correct.

13 Q. Was it basically the same
14 presentation given multiple times, or did the
15 presentation itself change?

16 A. It was the same basic
17 presentation with some unique information
18 about sales of each specific wholesaler that
19 we were talking with.

20 Q. And before you gave -- or held
21 the first distributor briefing, had you
22 gotten your PowerPoint approved by DEA?

23 MR. BENNETT: Objection.

24 Scope.

25 You are not authorized to

1 disclose the internal deliberative
2 process or any advice you received
3 from counsel.

4 You may answer the last
5 question yes or no only, whether there
6 was formal approval of DEA of the
7 final PowerPoint.

8 THE WITNESS: Yes, there was.

9 QUESTIONS BY MS. MCCLURE:

10 Q. And did you give this
11 presentation to individual distributors or
12 distributors as a whole?

13 How did it work?

14 A. Individual distributors.

15 Q. And how would you communicate
16 to the distributors that there was a new
17 initiative starting?

18 How did you communicate?

19 A. Called them and asked them to
20 come to headquarters to discuss it.

21 (Mapes Exhibit 7 marked for
22 identification.)

23 QUESTIONS BY MS. MCCLURE:

24 Q. I'm going to mark a document
25 Exhibit 7.

1 And for the record,

2 US-DEA-00000147 through 164?

3 A. Okay. I've reviewed it.

4 Q. Okay. The first page of this
5 document that ends in 147, what is this?

6 A. This is a memo that I signed to
7 William Walker, who was the deputy assistant
8 administration in diversion, about a meeting
9 that was held on August 10th with Steve Mays
10 of the AmerisourceBergen Drug Company.

11 Q. And this memo was authored by
12 you, right?

13 That's your signature?

14 A. Yeah, it was actually authored
15 by Kyle Wright, and I signed it.

16 Q. Okay. But you signed it after
17 reviewing it, I assume?

18 A. Yes.

19 Q. Right?

20 A. Yes.

21 Q. And you wouldn't have signed it
22 unless it was a complete and accurate
23 description of the meeting you had had?

24 MR. BENNETT: Objection. Form.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. Let me strike that.

3 Is this a complete and accurate
4 description of the meeting that you had with
5 Steve Mays?

6 A. As I remember it, yes.

7 Q. And then the second document
8 that begins 149 and ends at 162, what is that
9 document?

10 A. That is a copy of the
11 PowerPoint presentation that was used in the
12 meeting.

13 Q. So this is DEA's PowerPoint
14 presentation, correct?

15 A. Yes.

16 Q. In other words, it's not a
17 presentation AmerisourceBergen brought; it's
18 a DEA-authored presentation, correct?

19 A. Yes.

20 Q. The presentation that you
21 previously testified you had approved as part
22 of the distributor briefings, right?

23 A. Yes.

24 Q. And then the last document,
25 which is 163 to 164, what is that?

1 A. Those are some questions that
2 we provided to AmerisourceBergen that could
3 be asked to help them in their
4 decision-making process about whether or not
5 to ship controlled substances to a specific
6 pharmacy.

7 Q. To Internet pharmacies?

8 A. In this case we were discussing
9 Internet pharmacies, yes.

10 Q. That was the purpose of the
11 meeting you had with AmerisourceBergen on
12 August 10, 2005, correct?

13 A. Yes, it was.

14 Q. To discuss Amerisource -- I
15 mean to discuss Internet pharmacies?

16 A. Yes.

17 Q. And that's what it says -- and
18 if we flip back to the first page of Mapes 7,
19 the purpose of the meeting was to address the
20 illegal domestic Internet pharmacy problem
21 and their source of supply.

22 That's at the bot -- first
23 paragraph?

24 A. Yes.

25 Q. And the memo is called "The

1 Internet Presentation," right?

2 A. It is.

3 Q. And the title of the document
4 that begins on 149, which is the PowerPoint
5 that you gave, is called "Internet Pharmacy
6 Data," right?

7 A. Yes.

8 Q. And from the memo that you
9 wrote -- I'm sorry, that Kyle Wright wrote
10 and you signed, it looks like you led -- you,
11 Michael Mapes, led this distributor briefing
12 with AmerisourceBergen, this particular one,
13 right?

14 A. That's correct.

15 Q. This was the first distributor
16 briefing?

17 A. It was.

18 Q. Why start with
19 AmerisourceBergen Drug Corporation?

20 A. I don't recall why.

21 Q. Okay. And at the conclusion of
22 the presentation, from your memo, it seems
23 that Mr. Mays had arrived to this meeting
24 with some material for DEA -- I'm sorry,
25 that's not at the end of the memo. That's at

1 the bottom of page 1 of the memo.

2 Do you see that?

3 A. Yes, I do.

4 Q. Do you recall Mr. Mays arriving
5 at this meeting with material to discuss with
6 you?

7 A. No.

8 Q. Do you recall when you set
9 up -- well, first of all, let me back up.

10 Did you personally set up this
11 meeting with Steve Mays?

12 A. I did.

13 Q. Do you recall your conversation
14 with Steve Mays to set up this meeting?

15 A. No.

16 Q. So it appears that Mr. Mays
17 presented a sales profile for a pharmacy.

18 Do you see that?

19 A. Yes, I do.

20 Q. Did you know Mr. Mays before
21 this meeting?

22 A. I had seen him at industry
23 meetings and that kind of thing. Didn't know
24 him well.

25 Q. How would you describe

1 Mr. Mays' demeanor during this meeting?

2 A. I really don't recall.

3 Q. Okay. At the end of the memo
4 on the top of the document Bates-labeled 148,
5 the -- I'm sorry, the third full paragraph,
6 it says, "It was agreed that if E-Commerce
7 operations were to identify a highly
8 suspicious pharmacy to which
9 AmerisourceBergen was the wholesaler, that
10 OC -- ODCO" --

11 That stands for E-Commerce
12 operations, right?

13 A. Yes.

14 Q. -- "would notify
15 AmerisourceBergen via e-mail of the
16 suspicious activity for AmerisourceBergen to
17 review and take the actions the company deems
18 appropriate."

19 Do you recall that portion of
20 the meeting?

21 A. No.

22 Q. Subsequent to this, do you
23 recall reaching out to AmerisourceBergen to
24 notify AmerisourceBergen of any suspicious
25 activity that DEA wanted AmerisourceBergen to

1 review and take appropriate action?

2 MR. BENNETT: Objection.

3 Scope.

4 You're not authorized to
5 disclose information about specific
6 investigations.

7 At this time you can answer
8 this question yes or no only regarding
9 whether you remember having such
10 conversations.

11 THE WITNESS: No, I don't
12 recall any specific conversations.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Was Mr. Mays cooperative during
15 this meeting, to your recollection?

16 MR. BENNETT: Objection. Form.
17 Vague.

18 THE WITNESS: I just don't
19 recall.

20 QUESTIONS BY MS. MCCLURE:

21 Q. Okay. Other than what is
22 outlined in this memo and the presentation,
23 was there anything else discussed with
24 Mr. Mays during this briefing?

25 A. I don't recall.

1 Q. If there was anything else
2 discussed, is it fair to say that your
3 practice would have been to put it in a memo
4 or in the presentation?

5 A. In the memo.

6 Q. Okay. So if there's anything
7 else discussed, it would be in the memo
8 itself?

9 A. Right.

10 (Mapes Exhibit 8 marked for
11 identification.)

12 QUESTIONS BY MS. MCCLURE:

13 Q. Okay. A document marked as 8.
14 Let me know when you've had a
15 chance to review that document.

16 A. Okay. I've reviewed it.

17 Q. Okay. So this is a similar
18 presentation titled "Internet Presentation
19 with McKesson Corp" for the memo on page 1 of
20 this Mapes 8, right?

21 A. Yes, it is.

22 Q. And this is a similar document
23 to what we just reviewed.

24 There's a cover memo followed
25 by a somewhat clearer copy of the

1 presentation, and that's MCKMDL00496859 to
2 875, right?

3 A. Yes.

4 Q. And same -- may not be
5 literally identical, but the same basic
6 presentation you had given to
7 AmerisourceBergen Drug Corporation, correct?

8 A. Yes.

9 Q. And again, for the same
10 purpose, Internet pharmacies?

11 A. Yes.

12 Q. And again, if there had been
13 something additional discussed in your
14 meeting, you would have included it in the
15 cover memo?

16 A. Yes.

17 (Mapes Exhibit 9 marked for
18 identification.)

19 QUESTIONS BY MS. MCCLURE:

20 Q. And Mapes 9, US-DEA-00000352
21 through 366.

22 A. Okay. I've reviewed that.

23 Q. Okay. And that is a similar
24 memo followed by the PowerPoint presentation
25 that you provided to Cardinal Health on the

1 topic of Internet pharmacies on August 22,
2 2005?

3 A. It is.

4 Q. Okay. And again, may not be
5 literally identical, but the same basic
6 presentation you had given to
7 AmerisourceBergen Drug Corporation and
8 McKesson, correct?

9 A. Yes.

10 Q. For the same purpose, Internet
11 pharmacy issues?

12 A. Yes.

13 Q. And again, if there had been
14 something additional discussed in your
15 meeting, you would have included it in your
16 cover memo?

17 A. Yes.

18 Q. And we've gone through
19 AmerisourceBergen Drug Corporation, Cardinal
20 and McKesson.

21 Did you give similar
22 presentation to other registrants during the
23 '05-'06 time frame?

24 A. Yes.

25 Q. Did you personally continue to

1 give distributor briefings in your role as
2 the chief of the regulatory section?

3 A. I don't recall.

4 Q. So at the time, these ones that
5 we've gone through in 2005, you were the
6 chief of the E-Commerce section; is that
7 right?

8 A. Correct.

9 Q. And you don't recall whether
10 you -- when you shifted to the new role as
11 the chief of regulatory section, whether you
12 continued to give these distributor
13 briefings?

14 A. I just don't recall.

15 Q. Do you know whether -- do you
16 know whether the briefings continued into the
17 year 2007, whether you were involved with
18 them or not?

19 A. There were other briefings, but
20 I don't recall exactly the time frame of
21 them.

22 Q. Okay. What is a termination
23 notice in relation to a pharmacy?

24 A. I'm not sure whose terminology
25 that is.

1 Q. Okay. Would sometimes DEA
2 inform registrants that another registrant
3 had stopped shipping controlled substances to
4 a pharmacy?

5 A. That was done for a short
6 period of time, yes.

7 Q. And do you know what short
8 period of time that process was done for?

9 A. No, I don't recall.
10 (Mapes Exhibit 10 marked for
11 identification.)

12 QUESTIONS BY MS. MCCLURE:

13 Q. Okay. I'm going to hand you a
14 document marked 10, which is
15 CAH_MDL_PRIORPROD_DEA07_00857912-R.

16 A. Okay.

17 Q. Is this an example of an
18 instance where DEA would advise wholesalers
19 that distribution of controlled substances
20 had been halted to -- let me rephrase that.
21 Sorry.

22 Is this an example of DEA
23 notifying registrants of an immediate
24 suspension order for certain DEA
25 registrations?

1 A. Yes, it is.

2 Q. Okay. You can put that one
3 aside.

4 (Mapes Exhibit 11 marked for
5 identification.)

6 QUESTIONS BY MS. MCCLURE:

7 Q. And I will mark Mapes 11, which
8 is all -- the same intro to the Bates number,
9 ending in 01106667-R.

10 A. Okay.

11 Q. Is this document that I've
12 marked as Mapes 11 an example of DEA
13 notifying registrants that a certain
14 distributor who's unnamed had cut back on
15 sales of hydrocodone combination products?

16 MR. BENNETT: Objection.

17 Foundation. Vague.

18 QUESTIONS BY MS. MCCLURE:

19 Q. You can answer, if you can.

20 A. It is.

21 Q. And this document is dated
22 January 11, 2006.

23 Does reviewing this document
24 refresh your recollection of the time period
25 during which DEA would advise registrants

1 about pharmacy activity, either terminations
2 or, as in this example, cutbacks took place?

3 A. It's an example of that, yes.

4 Q. And does it refresh your
5 recollection as to the time period?

6 A. Yes.

7 Q. At least in '06?

8 A. Yes.

9 Q. Do you know how long after
10 January 11, 2006, DEA engaged in this
11 practice?

12 A. No, I don't.

13 Q. Do you know why this practice
14 was halted?

15 MR. BENNETT: Objection.

16 Scope.

17 You can answer that question
18 yes or no but may not disclose
19 internal deliberative process or
20 attorney-client privileged
21 communications.

22 THE WITNESS: Yes.

23 QUESTIONS BY MS. MCCLURE:

24 Q. Can you tell me why this
25 practice was halted?

1 A. No.

2 Q. Is that because your counsel --
3 or DEA counsel, Mr. Bennett, has instructed
4 you not to reveal internal deliberative
5 process or attorney-client privileged
6 communications?

7 A. Yes.

8 Q. Okay. Looking back at that
9 exhibit, it looks like it went to an e-mail
10 address called ODC@USDOJ.gov.

11 Do you know what that means?

12 A. No, I don't recall.

13 Q. Is that possibly an internal
14 distribution list that was set up for
15 purposes of communicating with registrants?

16 MR. BENNETT: Objection. Calls
17 for speculation.

18 THE WITNESS: I just don't
19 recall.

20 QUESTIONS BY MS. MCCLURE:

21 Q. Why did DEA send this
22 information that's reflected in Mapes 11 to
23 registrants?

24 MR. BENNETT: Objection.
25 Scope.

1 You're not a 30(b)(6) witness
2 to answer on behalf of DEA. You may
3 answer based on your reason for
4 sending the e-mail while you were
5 there.

6 THE WITNESS: My reason for
7 sending the e-mail was to provide
8 additional information to the
9 wholesalers when they're making a
10 decision about selling controlled
11 substances to a specific registrant.

12 QUESTIONS BY MS. MCCLURE:

13 Q. Because you believed that the
14 additional information would be helpful to
15 wholesalers?

16 A. Yes.

17 Q. Based on your experience, would
18 a distributor have a way to know about
19 another distributor's actions in cutting off
20 or cutting back supply to a pharmacy, other
21 than your e-mail that we just looked at of
22 Mapes 11?

23 MR. BENNETT: Objection.

24 Vague.

25 You can answer.

1 THE WITNESS: They may know
2 about that. If their salespeople were
3 in the pharmacy and talked to the
4 pharmacist, they may know those
5 things.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Okay. Do you recall whether
8 you or others with whom you worked, to the
9 extent you know, sent this kind of
10 information out frequently or whether it was
11 uncommon?

12 MR. BENNETT: Objection.
13 Vague. Compound.

14 THE WITNESS: Uncommon.

15 QUESTIONS BY MS. MCCLURE:

16 Q. In the course of your
17 employment at DEA, you were aware that
18 registrants were shipping orders that had
19 been reported to DEA as suspicious, right?

20 MR. BENNETT: Objection.
21 Scope.

22 This is beyond the scope that
23 this witness has been authorized.

24 You may answer based on your
25 personal recollection.

1 THE WITNESS: After having the
2 distributor briefings with individual
3 wholesalers, I don't recall instances
4 where products that were reported as
5 suspicious were shipped.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Does the Controlled Substances
8 Act say that registrants should not ship
9 suspicious orders?

10 MR. BENNETT: Objection. Form.
11 Calls for a legal conclusion.

12 You can answer based on your
13 personal capacity, not on behalf of
14 DEA.

15 If you know.

16 THE WITNESS: Not specifically,
17 no.

18 QUESTIONS BY MS. MCCLURE:

19 Q. And if an order is unusual in
20 size, frequency or pattern, do you agree that
21 that does not necessarily mean that that
22 order is going to be diverted?

23 MR. BENNETT: Objection.
24 Vague. Objection. Incomplete
25 hypothetical.

1 You can answer it.

2 THE WITNESS: I agree.

3 QUESTIONS BY MS. MCCLURE:

4 Q. And so the fact that an order
5 or a portion of an order is diverted after a
6 distributor ships it, would you agree that
7 that does not make that order that has
8 already been shipped now suspicious, if it
9 was not suspicious at the time it was
10 shipped?

11 MR. BENNETT: Objection.

12 Vague. Objection. Calls for
13 speculation. Legal conclusion.

14 You may answer in your personal
15 capacity but not on behalf of DEA.

16 THE WITNESS: I don't really
17 understand the nuances there.

18 QUESTIONS BY MS. MCCLURE:

19 Q. Okay. If an order is not
20 suspicious and is therefore filled and
21 shipped and later downstream is diverted,
22 that fact of that diversion does not now
23 render the order suspicious; do you agree
24 with that?

25 MR. BENNETT: Objection. Same

1 objections.

2 You can answer in your personal
3 capacity.

4 THE WITNESS: Yes.

5 QUESTIONS BY MS. MCCLURE:

6 Q. Similarly, if an order is
7 regarded as suspicious but is shipped, would
8 you agree that that order is not necessarily,
9 in fact, going to be diverted?

10 MR. BENNETT: Objection. Calls
11 for speculation. Vague. Incomplete
12 hypothetical. Outside the scope.

13 You may answer in your personal
14 capacity but not on behalf of DEA.

15 THE WITNESS: Yes.

16 MS. MCCLURE: It's 1:06. I'm
17 going to suggest we go ahead and take
18 a lunch break. That may allow us to
19 streamline.

20 MR. BENNETT: Okay. That's
21 fine.

22 VIDEOGRAPHER: We're going off
23 record. The time is 1:06.

24 (Off the record at 1:06 p.m.)

25 VIDEOGRAPHER: We're going back

1 on the record. Beginning of Media

2 File Number 6. The time is 2:11.

3 QUESTIONS BY MS. MCCLURE:

4 Q. Good afternoon, Mr. Mapes.

5 You understand you're still

6 under oath?

7 A. I do.

8 Q. Okay. Are you aware that DEA
9 issued an order to show cause and immediate
10 suspension order served on April 24, 2007, to
11 AmerisourceBergen Drug Corporation?

12 MR. BENNETT: You can answer.

13 THE WITNESS: I'm aware that
14 they issued one for a specific
15 distribution center.

16 QUESTIONS BY MS. MCCLURE:

17 Q. For the Orlando distribution
18 center?

19 A. Yes.

20 (Mapes Exhibit 12 marked for
21 identification.)

22 QUESTIONS BY MS. MCCLURE:

23 Q. Go ahead and mark this document
24 as Mapes 12.

25 A. Okay. I've read it.

1 Q. Did you have any involvement in
2 DEA work leading up to the issuance of this
3 document that is Mapes 12?

4 MR. BENNETT: Objection.
5 Scope.

6 You can answer that question
7 yes or no only.

8 THE WITNESS: No, I did not.
9 QUESTIONS BY MS. MCCLURE:

10 Q. Have you seen this document
11 before?

12 A. No, I haven't.

13 Q. But you were aware of its
14 existence prior to me telling you this today?

15 A. Yes.

16 Q. And you're familiar with the
17 concepts of DEA's use of order to show cause
18 and immediate suspension orders?

19 A. I am.

20 Q. And so was the effect of this
21 order to halt AmerisourceBergen Drug
22 Corporation's ability to fill any orders for
23 controlled substances out of the Orlando
24 distribution center?

25 MR. BENNETT: You can answer.

1 You can answer, I'm sorry.

2 THE WITNESS: Yes.

3 (Mapes Exhibit 13 marked for
4 identification.)

5 QUESTIONS BY MS. MCCLURE:

6 Q. Mark a document -- keep both
7 that out and this, if you would.

8 This is 13, which is
9 ABDCMDL00398334, and the prior document,
10 which was Mapes 12 is ABDCMDL00269383.

11 Take a look at that and let me
12 know when you've had a chance to review it.

13 A. I've reviewed it.

14 Q. And have you seen this document
15 before?

16 A. No, I have not.

17 Q. Were you aware of this document
18 prior to today, even if you've not seen the
19 actual document?

20 A. Yes.

21 Q. Okay. So this order of special
22 dispensation is dated April 27, 2007, on the
23 last page, right?

24 A. Yes.

25 Q. And it indicates on the first

1 page that the immediate suspension order,
2 which is Mapes 12, had been served on
3 April 24th, right?

4 A. Yes.

5 Q. So three days after the
6 original immediate suspension order was
7 issued, this order of special dispensation,
8 which is Mapes 13, was signed by DEA,
9 correct?

10 A. Yes.

11 Q. And that order of special
12 dispensation permitted AmerisourceBergen Drug
13 Corporation to fill orders for controlled
14 substances out of the Orlando facility for a
15 specific set of customers, namely hospitals,
16 clinics, the Department of Defense,
17 pharmacies within hospitals, clinics or
18 Department of Defense facilities, and the
19 facilities of PMSI, PharMerica and Kindred
20 Health Care and their subsidiaries, correct?

21 A. Yes.

22 Q. And do you have an
23 understanding as to why this order of special
24 dispensation happened three days after the
25 immediate suspension order?

1 A. No, I wasn't involved in that
2 process.

3 Q. Okay. What involvement did you
4 have in connection with this order to show
5 cause?

6 MR. BENNETT: Objection.
7 Scope.

8 You are not allowed to disclose
9 any nonpublic information regarding
10 enforcement actions taken by DEA or
11 any nonpublic information regarding
12 your investigations or activities at
13 DEA.

14 To the extent that there is
15 publicly disclosed facts about what
16 role you played in any investigation
17 that resulted in these documents, you
18 may answer.

19 MS. MCCLURE: In response to
20 that instruction, I am going to
21 withdraw that question, introduce
22 another document and come back to it.

23 (Mapes Exhibit 14 marked for
24 identification.)
25

1 QUESTIONS BY MS. MCCLURE:

2 Q. This is going to be marked as
3 Mapes 14.

4 MS. MCCLURE: And, James, while
5 Mr. Mapes is reviewing Mapes 14, I
6 will direct your attention to
7 paragraph 6 under Section 3 of the
8 agreement on page 6, which provides
9 "AmerisourceBergen and the DEA may
10 each disclose the existence of this
11 agreement and information about this
12 agreement to the public without
13 restriction."

14 Moreover, Mr. Mapes' Touhy
15 letter permits him to provide
16 information regarding his personal
17 recollection regarding DEA's
18 interpretation and enforcement of and
19 practices related to the CSA and its
20 implementing regulations.

21 So I will just note that and
22 ask you to take a look at those.

23 MR. BENNETT: Okay. I
24 understand your comment about the
25 settlement agreement "the DEA may

1 disclose" doesn't necessarily mean
2 that a former employee has been
3 authorized to disclose that on behalf
4 of DEA.

5 And in addition, I would note
6 that even with the authorization that
7 you're -- that you reference, which
8 was number 8, it does say in number 7
9 his personal recollection of any
10 information publicly disclosed by the
11 United States regarding enforcement
12 actions taken by DEA.

13 And I will also note in A it
14 says he is not authorized to disclose,
15 irrespective of the above
16 authorizations, any information
17 regarding any specific DEA
18 investigations or activities.

19 And so I don't know what your
20 questions are going to be, and to the
21 extent that this agreement has been
22 disclosed and other information has
23 been disclosed, he is authorized to
24 talk about that.

25 To the extent that he may --

1 and I don't know the answer to this,
2 but to the extent that he may have
3 been involved in investigation before
4 these orders were issued and that
5 information has never been made public
6 to your clients or to the public, he
7 is not authorized to disclose what he
8 did as an investigation that led up to
9 this.

10 THE WITNESS: Okay. I reviewed
11 it.

12 QUESTIONS BY MS. MCCLURE:

13 Q. Okay. Let's address one --
14 let's address Mr. Bennett's concern first.

15 Did you have any personal
16 involvement in the investigation that led to
17 the issuance of the -- what we've marked as
18 Mapes 12?

19 MR. BENNETT: You may answer
20 that question yes or no only.

21 QUESTIONS BY MS. MCCLURE:

22 Q. And the question is the time
23 leading up to it, so prior to April 19, 2007.

24 A. Yes.

25 Q. But you said that you did not

1 have any involvement in the order of special
2 dispensation which we've marked as Mapes 13?

3 MR. BENNETT: Objection.

4 Mischaracterizes past testimony.

5 QUESTIONS BY MS. MCCLURE:

6 Q. And if that's not correct,
7 please correct me.

8 A. I had not seen that document
9 prior to today.

10 Q. But you did have involvement in
11 events or discussions that led up to the
12 issuance of the order of special dispensation
13 marked as Mapes 13?

14 A. No.

15 MR. BENNETT: You may -- okay.

16 QUESTIONS BY MS. MCCLURE:

17 Q. Okay. Let me just be -- so no
18 involvement in Mapes 13 leading up to it?

19 A. That's correct.

20 Q. Okay. After DEA issued
21 Mapes 12, the order to show cause, did the
22 DEA work with AmerisourceBergen to evaluate
23 and develop a new suspicious order monitoring
24 program?

25 A. Can you repeat that question,

1 please?

2 Q. After DEA issued what we've
3 marked as Mapes 12, which is the order to
4 show cause and immediate suspension of
5 registration, did the DEA work with
6 AmerisourceBergen to evaluate and develop a
7 new suspicious order monitoring program?

8 MR. BENNETT: Objection.

9 Vague.

10 You can answer it.

11 THE WITNESS: No,
12 AmerisourceBergen created a new
13 program that we reviewed after they
14 created it.

15 QUESTIONS BY MS. MCCLURE:

16 Q. When you say "we reviewed after
17 they created it," was that something that you
18 were personally involved with, that review?

19 A. Yes.

20 Q. So AmerisourceBergen created a
21 new program in response to this order to show
22 cause, and then DEA reviewed that newly
23 designed program.

24 Do I have that correct?

25 A. Yes.

1 Q. And you were involved from DEA?

2 A. Yes.

3 Q. Who else from DEA was involved
4 in the review of AmerisourceBergen's program
5 that was developed in this April, May 2007
6 time period?

7 MR. BENNETT: You can answer.

8 THE WITNESS: I think I need to
9 discuss that with these folks.

10 MR. BENNETT: Can we go off the
11 record?

12 VIDEOGRAPHER: Going off
13 record. The time is 2:29.

14 (Off the record at 2:29 p.m.)

15 VIDEOGRAPHER: Going back on
16 record. Beginning of Media File 7.
17 Time 2:31.

18 MR. BENNETT: Counsel, I've had
19 an opportunity to discuss off the
20 record with the witness, and I have
21 explained to the witness that he is
22 authorized to answer your last
23 question, which was to identify the
24 people at DEA involved in the review.

25 I have indicated to him that he

1 is not authorized to disclose what
2 might have been specifically said that
3 was an internal deliberation or was
4 guidance from General Counsel's
5 office.

6 And with that, he's authorized
7 to answer the last question that you
8 asked.

9 Do you need the last question
10 read back?

11 THE WITNESS: No, I'm good.

12 MS. MCCLURE: Okay.

13 THE WITNESS: I reviewed it,
14 along with Kyle Wright and Larry Cody
15 from the Office of Chief Counsel.

16 QUESTIONS BY MS. MCCLURE:

17 Q. And when you say "I reviewed
18 it," the "it" you're referring to is the
19 changed program that AmerisourceBergen had
20 developed, correct?

21 A. Yes.

22 Q. And after you, Kyle Wright and
23 Larry Cody reviewed that new program is when
24 the document that I've marked as Mapes 14,
25 settlement and release agreement, was

1 executed by DEA and AmerisourceBergen Drug
2 Corporation on June 22, 2007; is that
3 correct?

4 A. Yes, it is.

5 Q. In between April 24, 2007, when
6 the order to show cause was served, and
7 June 22, 2007, when the settlement and
8 release agreement was signed, you worked with
9 AmerisourceBergen personnel who were
10 developing that program, correct?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: I reviewed the
14 work product that they created and
15 gave comments, but didn't work
16 directly with them as they were
17 developing it.

18 QUESTIONS BY MS. MCCLURE:

19 Q. And then they would take your
20 comments and incorporate them into the
21 program that they were working on; is that
22 correct?

23 A. Yes.

24 Q. So it was not one time that you
25 reviewed something related to this changed

1 program, but instead you would review it,
2 give comments, they would be incorporated,
3 you would review again.

4 Is that an accurate assessment?

5 MR. BENNETT: Objection.

6 Vague. Compound.

7 THE WITNESS: It was more along
8 the lines of them having a specific
9 question that was a part of the
10 changes.

11 They would call with a specific
12 question, we'd discuss it, and then
13 they would go back and work on it with
14 another specific question, that kind
15 of thing, rather than reviewing an
16 entire document.

17 QUESTIONS BY MS. MCCLURE:

18 Q. Okay. So it was -- pieces of
19 it along the way would be presented to you
20 for review and comment, and then maybe the
21 next day or a few days later they would reach
22 out again with some other related question.

23 Is that a fair assessment of
24 that time period?

25 MR. BENNETT: Objection.

1 Vague.

2 THE WITNESS: Yes.

3 QUESTIONS BY MS. MCCLURE:

4 Q. And do you recall whether that
5 work was primarily in April and May of 2007?

6 A. I don't recall exactly when
7 these things happened, no.

8 Q. Okay. So you've talked about
9 some phone calls that you would have with
10 AmerisourceBergen personnel.

11 Did you also have, you,
12 personally, have in-person meetings that you
13 attended about this changed program?

14 And I'm specifically talking
15 about the time period between April 24th of
16 '07, and the signing of the settlement and
17 release agreement on June 22, 2007.

18 A. There were meetings to discuss
19 the settlement agreement that included
20 discussions about the suspicious order
21 monitoring.

22 Q. Where were those meetings
23 physically?

24 A. I'm not sure. I do recall one
25 that was at the AmerisourceBergen

1 headquarters. I'm not sure if there was
2 others or not.

3 Q. We've talked about DEA
4 personnel who were involved.

5 Who do you recall being
6 involved in the work on this changed program
7 from the AmerisourceBergen Drug Corporation
8 side?

9 A. I don't recall who it was.

10 Q. You don't recall anyone from
11 AmerisourceBergen Drug Corporation that was
12 involved in the development of that changed
13 program over that two months?

14 A. It would be a guess at this
15 point. I just don't recall it.

16 (Mapes Exhibit 15 marked for
17 identification.)

18 QUESTIONS BY MS. MCCLURE:

19 Q. Show you a document that's
20 marked 15. For the record, ABDCMDL00316083.

21 This is a series of e-mails
22 that I'm not intending to ask you specific
23 questions about except to the extent as to
24 whether they refresh your recollection
25 regarding who from AmerisourceBergen Drug

1 Corporation was involved in development of
2 the new program that you worked with.

3 A. Okay. I've reviewed it.

4 Q. And does Exhibit 15 refresh
5 your recollection as to who from
6 AmerisourceBergen was involved with the
7 design of the changed program in the April,
8 May, June 2007 time period?

9 A. Could you repeat the initial
10 question?

11 Q. You mean the question I just
12 asked as to who was involved with the --

13 Who do you recall being
14 involved with the changed program that
15 AmerisourceBergen was working with and that
16 you reviewed in that April, May, June 2007
17 time period from AmerisourceBergen?

18 A. I was thinking the initial
19 question had to do with who was at specific
20 meetings that we had with Amerisource instead
21 of general involvement.

22 Q. Okay. Let's start with general
23 involvement.

24 Who from AmerisourceBergen do
25 you generally recall being involved with the

1 creation of the changed program in April, May
2 and June of 2007?

3 A. The person that I dealt with
4 most on that was Steve Mays.

5 Q. Okay. Anyone else you
6 recollect?

7 A. I can see e-mails related to
8 that from Eric Triveni and others that I
9 don't really recall.

10 Q. So your primary recollection is
11 Steve Mays?

12 A. Yes.

13 Q. And so it sounds like the
14 communications between you and
15 AmerisourceBergen during this time period
16 involved phone calls, e-mails, as we've just
17 seen in Mays 15 {sic}, as well as some
18 in-person meetings; is that correct?

19 A. Yes, it is.

20 Q. But you don't recall the number
21 of in-person meetings that you attended
22 regarding the changed program?

23 A. No, I don't.

24 Q. One feature of the changed
25 program was that AmerisourceBergen would now

1 hold orders flagged by a computer program and
2 investigate them as to whether they were
3 suspicious or not and only ship the orders
4 that AmerisourceBergen determined were not
5 suspicious; is that correct?

6 A. That's my understanding, yes.

7 Q. And is it your understanding
8 that that was a significant change in the
9 industry that was undertaken in 2007?

10 MR. BENNETT: Objection.

11 Vague.

12 You can answer.

13 THE WITNESS: Yes, that was a
14 change.

15 QUESTIONS BY MS. MCCLURE:

16 Q. Do you recall in connection
17 with this review also reviewing
18 AmerisourceBergen's due diligence procedures
19 and files?

20 A. I don't specifically recall
21 that, no.

22 Q. Do you recall working with
23 AmerisourceBergen during this time period on
24 thresholds?

25 A. No, I don't.

1 Q. Do you recall working with
2 AmerisourceBergen on a new customer due
3 diligence questionnaire in this time period?

4 A. No.

5 Q. The settlement agreement, if we
6 turn to Mapes 14, on page 3, in
7 Subsection 2C. Tell me when you're there.

8 A. I'm there.

9 Q. The settlement agreement called
10 for -- or required -- okay. Let me back up.

11 This Section 2 is called
12 "Obligations of DEA," correct?

13 A. It is.

14 Q. And Section C provides that
15 "the DEA shall conduct reviews of the
16 functionality of AmerisourceBergen's
17 diversion compliance program, parentheses,
18 compliance reviews, end parentheses, at up to
19 five distribution centers of
20 AmerisourceBergen."

21 And then it lists them out,
22 correct?

23 A. Yes.

24 Q. Were you involved in the
25 functionality compliance reviews conducted

1 between June 22, 2007, and the August 24,
2 2007 date set forth in this settlement
3 agreement?

4 A. My memory is that I was
5 involved in two of them.

6 Q. So of the five facilities or
7 distribution centers, you attended the
8 functionality compliance reviews at two of
9 them?

10 A. Yes.

11 Q. Do you recall which two?

12 A. Williamston, Michigan, and
13 Columbus, Ohio.

14 Q. And Columbus is not listed
15 there because there was an avenue to just
16 have DEA select two facilities, correct?

17 A. Yes.

18 Q. And so Columbus -- the Columbus
19 distribution center was one that DEA selected
20 for these compliance functionality reviews?

21 A. Yes.

22 Q. Do you recall who attended the
23 compliance functionality reviews at Orlando,
24 Sugar Land and the fifth distribution center
25 that DEA selected?

1 A. I do not.

2 Q. How long were the functionality
3 compliance reviews that you attended in
4 Williamston and Columbus?

5 A. Most of the day at each of
6 them.

7 Q. And what was the purpose that
8 you understood you were fulfilling when you
9 conducted these functionality compliance
10 reviews?

11 A. To determine if the
12 distribution centers were following the new
13 procedures that Amerisource had concerning
14 compliance.

15 Q. What activities do you recall
16 performing in connection with those
17 compliance functionality reviews?

18 MR. BENNETT: Objection.

19 Objection. Scope.

20 To the extent that this would
21 reveal investigative or intelligence
22 gathering and dissemination techniques
23 whose effectiveness would be impaired
24 by disclosing, you may not disclose
25 your activities.

1 To the extent that it does not,
2 you may answer the question.

3 THE WITNESS: Okay. And the
4 answer is, I don't remember
5 specifically what we did at the
6 locations.

7 QUESTIONS BY MS. MCCLURE:

8 Q. Okay. Do you remember who else
9 from DEA -- I understand you don't recall who
10 did the other specific functionality
11 reviews -- scratch that. Back up.

12 Moving along further in that
13 paragraph it says, "DEA shall also review the
14 investigatory files of the customers serviced
15 by the distribution centers subject to the
16 compliance reviews that are maintained by
17 AmerisourceBergen's corporate security and
18 regulatory affairs department in
19 Chesterbrook, Pennsylvania."

20 Do you see that language?

21 A. Yes, I do.

22 Q. Do you recall being involved in
23 the review of the customer files at
24 Chesterbrook?

25 A. No, I don't.

1 Q. Was it your understanding that
2 AmerisourceBergen Drug Corporation's license
3 for the Orlando facility was returned and
4 AmerisourceBergen was permitted to fulfill
5 customer controlled substances orders out of
6 the Orlando facility after the execution of
7 the settlement agreement?

8 A. If by "license" you're
9 referring to the DEA registration, yes.

10 Q. Thank you.

11 And so is it fair to conclude
12 that the compliance functionality reviews
13 confirmed that the distribution centers were,
14 in fact, following the new procedures that
15 AmerisourceBergen had regarding compliance?

16 A. Yes.

17 Q. Okay. You can set those
18 documents aside.

19 After you reviewed the new
20 changed program that AmerisourceBergen had
21 developed, you attended a DEA-sponsored
22 pharmaceutical industry conference in
23 Houston, Texas, in September of 2007.

24 Do you recall that?

25 A. Yes, I do.

1 Q. And that was a DEA diversion
2 control division-sponsored conference,
3 correct?

4 A. It was.

5 Q. And you invited Chris Zimmerman
6 to present with you at this conference,
7 right?

8 A. Someone did, yes.

9 Q. It was not you personally?

10 A. No.

11 Q. Did you have an understanding
12 that Chris Zimmerman was asked to present at
13 this conference because you and DEA thought
14 that AmerisourceBergen's new system, the
15 changed system, was appropriate and would be
16 good to share with others in the industry?

17 MR. BENNETT: Objection.

18 Scope.

19 You are not a 30(b)(6) witness
20 authorized to testify on behalf of
21 what DEA thought. You may answer with
22 respect to what you thought personally
23 while you were at DEA.

24 THE WITNESS: Yes, that was my
25 understanding of why he was asked to

1 be part of that.

2 QUESTIONS BY MS. MCCLURE:

3 Q. And so I wasn't there, but it
4 sounds like you and Mr. Zimmerman were both
5 up on stage together presenting ABDC's
6 changed program to industry at a DEA
7 conference.

8 Do I have that correct?

9 A. Yes.

10 (Mapes Exhibit 16 marked for
11 identification.)

12 QUESTIONS BY MS. MCCLURE:

13 Q. Show you a document marked 16.

14 Now, Mr. Mapes, you are, of
15 course, free to review the entire document.
16 The section that I will be asking you about
17 is on the second page under a header called
18 "Suspicious Orders."

19 A. I've reviewed it.

20 Q. In the second paragraph under
21 Suspicious Orders, it says, "Mr. Zimmerman
22 stressed the importance of knowing your
23 customer and providing due diligence
24 investigation on all new retail and wholesale
25 accounts with the exception of retail chain

1 pharmacies."

2 Do you see that language there?

3 A. I do.

4 Q. Can you explain the exception
5 for retail chain pharmacies?

6 A. No, I didn't discuss that
7 particular exception with him, so I don't
8 know why he included that.

9 Q. Did you review Mr. Zimmerman's
10 PowerPoint prior to co-presenting with him at
11 this DEA-sponsored industry conference?

12 A. I'm not sure he had a
13 PowerPoint.

14 (Mapes Exhibit 17 marked for
15 identification.)

16 QUESTIONS BY MS. MCCLURE:

17 Q. Show you a document that is
18 marked Mapes 17.

19 A. I've reviewed this.

20 Q. So does this refresh your
21 recollection that Chris Zimmerman had a
22 PowerPoint that he presented at the
23 September 11, 2007 industry conference?

24 A. No, I still don't remember the
25 presentation details.

1 Q. Okay. I'm not asking if you
2 remember the presentation details. I'm just
3 asking if you recall that Chris Zimmerman
4 stood on stage with you and made a
5 presentation and that it had a PowerPoint
6 attached in connection with it.

7 A. We were both --

8 MR. BENNETT: Objection.

9 Compound.

10 You can answer.

11 THE WITNESS: We were both on
12 stage for a presentation, but I don't
13 remember the PowerPoint.

14 QUESTIONS BY MS. MCCLURE:

15 Q. Okay. Was there anyone else
16 from DEA who presented on this changed
17 AmerisourceBergen program along with
18 Mr. Zimmerman, or was it only you?

19 A. It was just Mr. Zimmerman and
20 myself.

21 Q. Do you recall referring to this
22 changed program as the new industry standard?

23 A. No, I don't recall that.

24 Q. Do you believe that -- was it
25 your understanding that it was expected by

1 DEA, to your understanding, to serve as a new
2 standard?

3 MR. BENNETT: Objection.
4 Scope.

5 You're not authorized as a
6 30(b)(6) witness to speak on behalf of
7 DEA. You may answer based on your
8 personal understanding at the time.

9 THE WITNESS: It's my
10 understanding that the
11 AmerisourceBergen system was an
12 example of a system that contained the
13 type of information that we were
14 looking for.

15 QUESTIONS BY MS. MCCLURE:

16 Q. And was compliant with the
17 Controlled Substances Act?

18 A. Yes.

19 Q. And was being carried out in
20 connection with the program that you had
21 reviewed based on your personal, on-site
22 reviews of those distribution centers?

23 A. Yes.

24 Q. If you turn to page 9 of
25 whatever this PowerPoint exhibit is --

1 MR. BENNETT: Mapes 17.

2 MS. MCCLURE: Thank you. Yes,
3 Mapes 17.

4 QUESTIONS BY MS. MCCLURE:

5 Q. -- which has little Bates
6 numbers on it that end in 1786.

7 It says, "Historically,
8 controlled substance" -- I'm looking at the
9 second and third bullet -- "slash, listed
10 chemical order monitoring has been based on a
11 ship and report process."

12 And the next bullet, "ABC's OMP
13 process is now based on identify, capture,
14 investigate and report suspicious orders, all
15 prior to shipment."

16 Do you see that language?

17 A. Yes, I do.

18 Q. And was it your understanding
19 that this was one of the new features of the
20 changed program that AmerisourceBergen had
21 developed?

22 A. Yes.

23 Q. And this was new not just to
24 AmerisourceBergen but to the wholesale
25 industry?

1 MR. BENNETT: Objection.

2 Vague. Foundation.

3 QUESTIONS BY MS. MCCLURE:

4 Q. Distributor industry.

5 MS. MCCLURE: He can answer the
6 question, right? He was waiting --

7 MR. BENNETT: Oh, yeah.

8 So, objection. Vague.

9 Objection. Foundation.

10 You may answer.

11 THE WITNESS: Yes, this was a
12 change for the wholesale industry.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Mr. Mapes, after you retired
15 from DEA in 2007, you began consulting, as we
16 discussed much earlier in today's deposition?

17 A. Yes.

18 Q. And one of those companies that
19 you performed some consulting work for was
20 AmerisourceBergen Drug Corporation, correct?

21 A. That's correct.

22 Q. When did you first start
23 consulting for AmerisourceBergen Drug
24 Corporation?

25 A. In early 2008.

1 Q. And are you still consulting
2 for them?

3 A. No, I'm not.

4 Q. When did you stop consulting
5 for ABDC?

6 A. Around 2014, 2015.

7 Q. And why was that?

8 A. Because I was spending a lot of
9 time with the pharmacy that I was working
10 with and didn't have time to do both
11 adequately.

12 Q. And the work you performed for
13 ABDC, did that include advising on compliance
14 with DEA regulations and policies?

15 A. It did.

16 Q. Did that include discussing
17 issues that might come up about DEA's
18 interpretation of the regulations?

19 A. Yes.

20 Q. And did it include actual
21 on-site visits to pharmacies to assist with
22 due diligence, whether it's new customer or
23 ongoing customer due diligence?

24 A. It did.

25 Q. Did you also -- sorry, strike

1 that.

2 Do you recall actually visiting
3 pharmacies on behalf of ABDC?

4 A. Yes.

5 Q. Do you recall how often?

6 A. Generally it would be two or
7 three times a year for a week, but seeing
8 several pharmacies in that week's time in a
9 part of the country.

10 Q. What kind of activities would
11 you perform at the pharmacy?

12 A. Looking at the pharmacies,
13 seeing what kind of customers they had, what
14 kind of drugs they were selling, the
15 relationship between the pharmacy and the
16 physicians, discussing issues with the
17 pharmacist.

18 Q. Did anyone from ABDC accompany
19 you on these visits to pharmacies?

20 A. Yes, every time.

21 Q. And do you know whether ABDC
22 was also performing other on-site visits at
23 pharmacies that you were not personally
24 involved with?

25 A. Yes, they were.

1 Q. Did you also perform audits of
2 AmerisourceBergen Drug Corporation's
3 suspicious order monitoring program?

4 A. Yes, I did.

5 Q. How many times did you audit
6 the order monitoring program?

7 A. Annually for five or six years.

8 Q. And do you recall concluding
9 that ABDC's suspicious order monitoring
10 program for those audits that you conducted
11 was in compliance with the Controlled
12 Substances Act?

13 A. That's not the review that I
14 was conducting.

15 Q. Tell me about the review that
16 you were conducting.

17 A. I was looking at it to
18 determine if it was in compliance with the
19 ABC policies and procedures.

20 Q. Okay. And those ABC policies
21 and procedures were the policies and
22 procedures that were developed in connection
23 with the changed program in 2007, correct?

24 A. In conjunction with that and
25 changes that were made subsequent to that.

1 Q. Okay. So it would have been
2 the policies and procedures that were enacted
3 that you would have reviewed back in 2007
4 during your time at DEA, as well as any
5 updates or improvements that had been made to
6 them subsequent?

7 A. Yes.

8 Q. And did you determine that ABDC
9 was in compliance with its policies and
10 procedures for these annual audits?

11 A. There were generally issues to
12 discuss, improvements to be made, but
13 generally in compliance, yes.

14 Q. Going back to excessive
15 purchase reports.

16 DEA's acceptance of excessive
17 purchase reports changed at some point,
18 correct?

19 MR. BENNETT: Objection.

20 Scope.

21 You're not authorized to speak
22 on behalf of DEA. You may speak on
23 your personal knowledge of what you
24 observed while working at DEA.

25 THE WITNESS: The nature of the

1 reports that I was involved with that
2 were accepted did change, yes.

3 QUESTIONS BY MS. MCCLURE:

4 Q. And what was the change?

5 A. It was change from a report
6 that was called an excessive purchase report
7 after the fact to a report that was of
8 specific suspicious orders before they were
9 shipped.

10 Q. And that's the change that
11 we've talked about that AmerisourceBergen had
12 in the April, May, June 2007 time period that
13 you reviewed, correct?

14 A. Yes.

15 Q. Were you aware of any industry
16 participants making that change prior to that
17 program that you reviewed in April, May and
18 June of 2007?

19 A. I don't recall the exact dates
20 when other companies were making the changes,
21 but it was a change that happened routinely
22 after we had the Distributor Initiative
23 meeting with companies.

24 Q. And was this -- do you know if
25 this was viewed by industry, based on your

1 knowledge, as a significant change or a minor
2 one?

3 A. I don't know how they viewed
4 it.

5 Q. No one ever said anything to
6 you about that?

7 A. No.

8 Q. Was there any rulemaking put
9 into effect regarding this change?

10 Do you know what I mean by
11 rulemaking?

12 A. Yeah. Notice and comment
13 rulemaking, no, there wasn't.

14 MS. MCCLURE: So we know who
15 put us on hold, and it's Napoli.

16 Hunter. I recall Hunter.

17 So I think we're going to need
18 to hang this up.

19 So anyone who's on the phone
20 who can hear us, we're going to --

21 So I think we need -- so we're
22 going to go off the record.

23 VIDEOGRAPHER: Okay. Going off
24 record. The time is 3:13.

25 (Off the record at 3:13 p.m.)

1 VIDEOGRAPHER: We're going back
2 on the record. Beginning of Media
3 File 8. The time is 3:26.

4 MS. MCCLURE: So thank you,
5 Mr. Mapes. I'm going to at this point
6 turn the defense questioning over to
7 Ms. Wicht on behalf of Cardinal. I
8 appreciate you, again, being here
9 today. And subject to my redirect
10 anticipated for tomorrow, I will turn
11 over questioning.

12 EXAMINATION

13 QUESTIONS BY MS. WICHT:

14 Q. Good afternoon, Mr. Mapes.

15 A. Good afternoon.

16 Q. As Shannon just said, I'm
17 Jennifer Wicht, and I represent Cardinal
18 Health.

19 And you -- as you indicated
20 before, you and I have met previously on one
21 occasion, correct?

22 A. Correct.

23 Q. Okay. I have just basically
24 some follow-up questions. I'm going to come
25 back to some areas that you spoke about

1 already with Ms. McClure generally and just
2 ask a few more questions on them.

3 So what I will do generally at
4 the beginning is try to just orient you about
5 the subject that I'm going to back to, so
6 I'll refer to the testimony that you gave
7 earlier today. But certainly if I, in doing
8 that, I say something that's incorrect and is
9 not what you said earlier today, I ask you to
10 please correct me when I do that.

11 Okay?

12 A. Okay.

13 Q. Thank you.

14 Okay. So earlier today you
15 testified that during your tenure at the DEA
16 you would have periodic conversations with
17 registrants about their suspicious order
18 monitoring systems, correct?

19 A. Yes.

20 Q. And I think you said that from
21 time to time you would speak with people and
22 they would ask you for advice or input about
23 some particular feature of their suspicious
24 order monitoring system.

25 Do I have that correct?

1 A. Yes.

2 Q. Okay. And when you had those
3 conversations with registrants, did you
4 attempt to provide them with guidance about
5 their systems?

6 A. More than guidance about their
7 system. Just answering the specific question
8 that they had.

9 Q. Okay. You were --

10 MR. BENNETT: I'm not sure the
11 realtime is rolling. At least our
12 screen isn't working. I don't know if
13 others are having the same problem.

14 QUESTIONS BY MS. WICHT:

15 Q. Okay. Thank you. I had to
16 look back and see the answer that you had
17 given because I got distracted there.

18 So you were answering questions
19 about -- from registrants about their
20 suspicious order monitoring systems; is that
21 fair?

22 A. Yes.

23 Q. And when you had those
24 conversations where you would answer
25 questions, were you attempting to help

1 registrants meet their regulatory
2 obligations?

3 A. Yes.

4 Q. And when you had those
5 conversations with registrants, were you
6 honest in the advice that you provided to
7 them about their suspicious order monitoring
8 systems?

9 A. Yes.

10 Q. And did you believe that
11 registrants could rely on the information
12 that you provided in those conversations that
13 you had with them about their suspicious
14 order monitoring systems?

15 A. Yes.

16 Q. And were you aware -- strike
17 that.

18 At the point in time in your
19 tenure at DEA when you were supervising other
20 diversion investigators, were you aware of
21 whether those individuals were having
22 conversations with registrants about their
23 suspicious order monitoring systems of a
24 similar nature to what you've described?

25 MR. BENNETT: Objection.

1 Vague.

2 THE WITNESS: Not necessarily,
3 no.

4 QUESTIONS BY MS. WICHT:

5 Q. Do you know -- you don't know
6 one way or another whether they were or they
7 were not having those conversations?

8 A. That's correct.

9 Q. Okay. You were Kyle Wright's
10 supervisor for a period of time at DEA,
11 correct?

12 A. Yes.

13 Q. Do you have any knowledge or
14 recollection as to whether Mr. Wright
15 specifically had conversations with
16 registrants where he provided -- where he
17 answered questions about suspicious order
18 monitoring systems?

19 A. No, I don't.

20 Q. Okay. Would you expect that if
21 a representative of DEA was having a
22 conversation with a registrant to answer
23 their questions about suspicious order
24 monitoring systems, that the DEA employee
25 would be honest in their conversations with

1 the registrant?

2 A. Yeah, I would expect so.

3 Q. And would you expect that the
4 registrant would be able to rely on the
5 information that was provided by the DEA
6 employee in those conversations?

7 A. Yes.

8 Q. Okay. I'm going to change
9 topics a little bit here.

10 Another thing that you
11 described in your testimony earlier today was
12 a change in DEA's expectation of how
13 suspicious order reporting should be done.

14 Do you recall that?

15 MR. BENNETT: Objection.

16 Mischaracterizes testimony. This
17 witness did not speak for DEA's
18 expectation.

19 QUESTIONS BY MS. WICHT:

20 Q. I'll rephrase the question in
21 light of the objection.

22 Earlier in your testimony
23 today, you described a change in your
24 expectation or understanding of how
25 wholesalers would conduct suspicious order

1 monitoring and reporting, correct?

2 A. Yes.

3 Q. And that was -- you were just
4 recently testifying about that in connection
5 with the presentation that you did with ABDC
6 at the diversion conference in the fall
7 of 2007, correct?

8 A. Yes.

9 Q. Okay. And I think you said,
10 but please correct me if I'm wrong, that you
11 were aware that the expectation -- or you
12 were -- excuse me, strike that. Let me start
13 again.

14 You were aware that the system
15 that ABDC was presenting at the conference
16 represented a change in how wholesalers were
17 conducting suspicious order monitoring and
18 reporting; is that correct?

19 A. It is.

20 Q. Okay. And when -- but there
21 was no change in the regulation, correct?

22 A. That's correct.

23 Q. So is it fair to say that the
24 change was in what DEA -- how DEA was
25 expecting wholesalers to comply with the

1 regulation?

2 MR. BENNETT: Objection.

3 Scope.

4 You're not authorized to speak
5 on behalf of DEA. You may speak upon
6 your personal knowledge of what was
7 happening.

8 THE WITNESS: Yes, I did expect
9 that wholesalers would report
10 suspicious orders differently than
11 they had prior to the meetings and
12 that conference.

13 QUESTIONS BY MS. WICHT:

14 Q. Okay. So when you -- when your
15 expectations changed about how wholesalers
16 would report suspicious orders, did you
17 expect that wholesalers would be able to
18 change their systems instantaneously, or did
19 you expect that it would take some time for
20 them to implement the change to the systems?

21 A. My expectation is that it would
22 take some time. Not a -- not a year, not six
23 months, but some time for them to change.

24 Q. Because they were required
25 to -- they were being asked to prepare and

1 establish effectively a new suspicious order
2 monitoring system, correct?

3 A. Yes.

4 Q. Okay. I want to come back to
5 talking about the presentation that you made
6 with ABDC in the fall of 2007, and I want to
7 direct your attention back to Exhibit 17, if
8 you still have that in front of you.

9 A. Yes, I do.

10 Q. Sorry, thank you.

11 So if you would -- if you
12 would -- and this was a -- I believe you
13 testified earlier that the presentation was
14 made by Mr. Zimmerman of ABDC, correct?

15 A. Yes, it was.

16 Q. And you were on the stage with
17 him at the time that he presented?

18 A. Yes.

19 Q. And if you would turn to Slide
20 Number 7 in the deck, which has the Bates
21 number ending 1784?

22 A. Yes.

23 Q. And that's a slide that's
24 titled "New Customer Due Diligence," correct?

25 A. It is.

1 Q. And do you see that on the
2 slide deck it says, "Retail chain pharmacies
3 are exempted from the due diligence
4 investigations completed on new retail and
5 wholesale accounts"?

6 A. It does.

7 Q. Do you recall, when this
8 presentation was delivered, whether anyone
9 from DEA stated -- stood up and told the
10 group that DEA didn't agree with that
11 exemption?

12 A. I don't recall if they did or
13 didn't.

14 (Mapes Exhibit 18 marked for
15 identification.)

16 QUESTIONS BY MS. WICHT:

17 Q. I've handed you what's been
18 marked as Exhibit 18, if you want to take a
19 moment and look at that.

20 And just for the record, this
21 is a document that's Bates-stamped
22 HDS_MDL_00135664 through 65.

23 MR. LANIER: Do you have a copy
24 for me, Shannon?

25 MS. WICHT: I'm not Shannon,

1 but I can get you one.

2 MR. LANIER: Oh, I'm sorry, I
3 don't have my glasses on.

4 Thank you. Sorry, Jennifer.

5 MS. WICHT: No problem.

6 THE WITNESS: Okay.

7 QUESTIONS BY MS. WICHT:

8 Q. Have you ever seen this
9 document before, Mr. Mapes?

10 A. No, I have not.

11 Q. Okay. Do you see at the top
12 that it's titled as a "Summary of the DEA
13 HDMA Meeting on Suspicious Orders"?

14 A. Yes.

15 Q. And are you familiar with HDMA?

16 A. Yes.

17 Q. And what is HDMA?

18 A. It's an industry association,
19 the Healthcare Distribution Management
20 Association.

21 Q. And do you see that this
22 recites a meeting date of September 7, 2007,
23 and it lists several DEA attendees, including
24 you?

25 A. Yes.

1 Q. Do you recall meeting with HDMA
2 on the subject of suspicious orders in
3 approximately this time frame?

4 A. No.

5 Q. Okay. If you could turn your
6 attention to the second page of the document,
7 please.

8 A. (Witness complies.)

9 Q. And there's a first sort of
10 full bullet that appears on that page, and it
11 says, "DEA also does not want to see --
12 receive suspicious order reports that merely
13 reflect volumes that went over a threshold.
14 They wanted reports that are, quote, true,
15 close quote, suspicious orders."

16 Do you see that?

17 A. Yes.

18 Q. Do you recall ever
19 communicating that to HDMA?

20 A. No, because I really don't
21 recall the meeting.

22 Q. Okay. Do you recall -- leaving
23 aside whether it was at this particular
24 meeting, which I understand that you can't
25 recall, do you recall ever communicating that

1 point that's recited here, that DEA only
2 wanted to receive suspicious order reports
3 of, quote, true suspicious orders to
4 registrants?

5 A. I recall discussing that, but I
6 don't recall who it was with or when, that
7 kind of thing.

8 Q. Okay. Fair enough.

9 And what does that mean, to say
10 that DEA -- well, to your understanding, what
11 did that mean when you communicated that DEA
12 wanted to receive reports that were true
13 suspicious orders, not merely volumes that
14 went over a threshold?

15 A. That we are looking for reports
16 that the wholesalers had reviewed, not just
17 with a raw number of drugs that were ordered
18 but reviewed it and determined that it was
19 suspicious.

20 Q. So I think earlier you
21 described suspicious order reporting as
22 requiring some element of subjective
23 judgment; is that right?

24 A. Yes.

25 Q. So this point that DEA wanted

1 reports that are true suspicious orders, is
2 that conveying that DEA wanted to receive
3 reports only after the wholesaler had applied
4 that subjective judgment?

5 MR. BENNETT: Objection.

6 Scope.

7 You're not authorized to speak
8 on what DEA wanted.

9 You may speak on what you
10 personally meant when you communicated
11 that point to registrants.

12 THE WITNESS: Now I don't
13 remember the question.

14 QUESTIONS BY MS. WICHT:

15 Q. That's what I was just about to
16 say.

17 So the question was: When you
18 were communicating to registrants that DEA
19 wanted to receive true suspicious order
20 reports, not merely volumes that went over a
21 threshold, were you conveying that you wanted
22 to receive reports only after the wholesaler
23 had applied their subjective judgment to
24 determine whether the order was truly
25 suspicious?

1 A. Yes, that's what I was...

2 Q. Okay. If someone asserted that
3 90 percent of all orders that were shipped
4 after September of 2007 should have been
5 reported to DEA as suspicious, would that be
6 consistent with your expectations as you've
7 described them today?

8 A. If they said 90 percent of
9 orders shipped by wholesalers, no, I wouldn't
10 think that was a number that was close to
11 those that should be suspicious.

12 Q. I'm going to switch gears again
13 here for a moment and just talk -- a couple
14 of questions about excessive purchase
15 reports.

16 I think you mentioned earlier
17 today that different registrants may have
18 provided excessive purchase reports in
19 different forms; is that right?

20 A. That's correct.

21 Q. And sometimes different
22 registrants may have called the reports by
23 different names; is that right?

24 A. Yes.

25 Q. Do you have any recollection

1 about whether Cardinal Health referred to
2 those reports as ingredient limit reports?

3 A. I don't recall.

4 Q. Don't recall one way or the
5 other?

6 A. Right.

7 Q. Fair enough.

8 You testified earlier today
9 about cyclic audits performed by DEA
10 investigators of wholesalers' distribution
11 centers, correct?

12 A. Yes.

13 Q. I just have a couple of
14 follow-up questions about that.

15 At the conclusion of a cyclic
16 audit, is it correct that the DEA
17 investigator's report would not be provided
18 to the registrant?

19 A. Yes, that's correct.

20 Q. So is it correct that a
21 registrant who went through a cyclic audit
22 and had no discrepancies found, the
23 registrant would not have a DEA document
24 reflecting that fact? Is that correct?

25 A. Unless the registrant requested

1 it through FOI or something like that.

2 Q. So your understanding that
3 registrants could receive audit reports
4 through the FOIA process?

5 A. Yes.

6 MS. WICHT: I don't have any
7 more questions this afternoon, so I'm
8 going to turn it over to the next
9 person.

10 Thank you very much, Mr. Mapes.

11 THE WITNESS: Okay.

12 VIDEOGRAPHER: Going off the
13 record. The time is 3:48.

14 (Off the record at 3:48 p.m.)

15 VIDEOGRAPHER: We're going back
16 on record. Beginning of Media File 9.
17 The time is 3:50.

18 EXAMINATION

19 QUESTIONS BY MR. EPPICH:

20 Q. Good afternoon, Mr. Mapes. My
21 name is Chris Eppich. I represent McKesson
22 in this litigation.

23 A. Good afternoon.

24 Q. I just have a few questions for
25 you to follow up on the questions of my

1 colleagues this morning and this afternoon.

2 It's true that the DEA
3 registers every pharmacy, distributor and
4 manufacturer that handles controlled
5 substances, correct?

6 A. Yes.

7 Q. And each pharmacy, distributor
8 and manufacturer must submit an application
9 for controlled substances to DEA?

10 A. Yes.

11 Q. DEA evaluates each application?

12 MR. BENNETT: Objection.

13 Scope.

14 You can answer, if you know.

15 THE WITNESS: They evaluate
16 them in different ways depending on
17 the category of the registrant. A
18 manufacturer is much more of an
19 evaluation than a retail pharmacy.

20 QUESTIONS BY MR. EPPICH:

21 Q. What is the evaluation of a
22 manufacturer?

23 MR. BENNETT: Objection.

24 Scope.

25 THE WITNESS: It's an on-site

1 review of their recordkeeping,
2 security, quotas, what they're going
3 to manufacture, all the -- you know,
4 everything from A through Z at the
5 manufacturer.

6 QUESTIONS BY MR. EPPICH:

7 Q. Will you describe the
8 evaluation of a potential distributor
9 registrant?

10 MR. BENNETT: Objection.

11 Scope.

12 THE WITNESS: It's a review, an
13 on-site review, at the location to
14 determine if they have the proper
15 security, recordkeeping and other such
16 things to become a wholesaler.

17 QUESTIONS BY MR. EPPICH:

18 Q. And will you describe the
19 evaluation process for a potential pharmacy
20 registrant?

21 MR. BENNETT: Objection.

22 Scope.

23 THE WITNESS: It's basically a
24 clerical review to be sure that they
25 have the appropriate state license.

1 QUESTIONS BY MR. EPPICH:

2 Q. Is there an on-site inspection
3 or review of a potential pharmacy registrant?

4 MR. LANIER: Object to these
5 questions. The time frame is not put
6 into them.

7 MR. BENNETT: I object to
8 scope.

9 QUESTIONS BY MR. EPPICH:

10 Q. While you were at DEA, sir.

11 A. It changed while I was at DEA.
12 For the first several years there was no
13 on-site review of pharmacies, but after some
14 point in time in the mid-2005-ish time, there
15 were some offices that were performing
16 on-site reviews of pharmacies.

17 Q. Do you know why that changed?

18 MR. BENNETT: Objection.

19 Scope.

20 You're not authorized to
21 disclose the internal deliberative
22 process of the DEA.

23 To the extent that you can
24 answer this question based on your
25 personal knowledge without disclosing

1 internal deliberations, you may
2 answer.

3 THE WITNESS: So I don't really
4 know why some divisions did that and
5 others didn't.

6 QUESTIONS BY MR. EPPICH:

7 Q. If I could ask you to turn to
8 Exhibit 3.

9 A. I've got it.

10 Q. Look at Section 1301.74(a).
11 Are you familiar with
12 Section 1301.74(a), sir?

13 A. Yes.

14 Q. Section 1301.74(a) says,
15 "Before distributing a controlled substance
16 to any person who the registrant does not
17 know to be registered to possess the
18 controlled substance, the registrant shall
19 make a good faith inquiry either with the
20 administration or with the appropriate state
21 controlled substances registration agency, if
22 any, to determine that the person is
23 registered to possess the controlled
24 substance."

25 Do you see that, sir?

1 A. I do.

2 Q. So Section 1301.74(a) requires
3 a registrant to make a good faith inquiry to
4 determine that a customer is registered to
5 possess controlled substances; is that
6 correct?

7 A. It is.

8 Q. Section 1301.74(a) requires a
9 registrant to then check its customer's DEA
10 registration before distributing controlled
11 substances to the customer, correct?

12 A. It requires they check it at
13 some point in time, not necessarily every
14 time before they distribute.

15 Q. Section 1301.74(a) imposes no
16 other requirement on distributors to perform
17 due diligence on its customers, does it?

18 A. It does not.

19 Q. And DEA conducts diligence on
20 the applicants so the distributors can rely
21 on the DEA registrations when complying with
22 1301.74(a)?

23 MR. BENNETT: Objection.

24 Scope. Objection. Vague. Objection.

25 Calls for speculation.

1 And this witness is not a
2 30(b)(6) witness, so he's not
3 answering on behalf of DEA.

4 To the extent you have an
5 opinion in your personal capacity, you
6 may answer.

7 THE WITNESS: Okay. If you
8 could restate the question for me.

9 QUESTIONS BY MR. EPPICH:

10 Q. I'll strike the question.

11 Earlier today you testified
12 about how the Office of Diversion Control is
13 funded.

14 Do you remember that testimony?

15 A. Yes.

16 Q. And you testified that the
17 Office of Diversion Control is funded through
18 registration fees; is that correct?

19 A. Yes.

20 Q. The Office of Diversion Control
21 is also funded through any fines levied
22 against registrants, correct?

23 A. No.

24 Q. Is the only source of funding
25 for the Office of Diversion Control

1 registration fees?

2 A. The majority is registration
3 fees. There are also a few positions that
4 are from appropriated funds, but very few.

5 Q. Earlier today you testified
6 about the emergence of Internet pharmacies in
7 the early 2000s.

8 Do you recall that testimony?

9 A. Yes, I do.

10 Q. Internet pharmacies represented
11 a significant shift in pharmaceutical
12 diversion, correct?

13 MR. BENNETT: Objection.

14 Vague.

15 You can answer.

16 THE WITNESS: They did
17 represent a shift.

18 QUESTIONS BY MR. EPPICH:

19 Q. There were concerns that DEA's
20 anti-diversion group was understaffed to
21 address the Internet pharmacy issue?

22 A. I don't recall those concerns,
23 no.

24 Q. DEA decided that one way to
25 help combat the Internet pharmacies would be

1 to establish this Internet Distributor
2 Initiative, correct?

3 Excuse me, the Internet -- let
4 me strike that.

5 One way that -- and DEA decided
6 that one way to combat the Internet pharmacy
7 issue would be to establish the Distributor
8 Initiative, correct?

9 MR. BENNETT: You can answer.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. EPPICH:

12 Q. And these Distributor
13 Initiative meetings were meant to educate
14 distributors about Internet pharmacies?

15 A. Yes.

16 Q. And during the Distributor
17 Initiative meetings, you introduced
18 additional diligence, guidance and
19 instructions to distributors to confirm that
20 a distributor is not servicing a rogue
21 Internet pharmacy, correct?

22 MR. BENNETT: Objection.

23 Vague.

24 THE WITNESS: To help them
25 understand what to look at to

1 determine if a customer is a rogue
2 Internet pharmacy.

3 QUESTIONS BY MR. EPPICH:

4 Q. The objective of this
5 additional diligence that you were requesting
6 out of distributors was for the distributors
7 to be able to identify those rogue Internet
8 pharmacy customers of theirs, correct?

9 A. Yes.

10 Q. You were not intending the
11 additional diligence to require distributors
12 to investigate the inner workings of every
13 independent pharmacy across America that they
14 may service, correct?

15 MR. BENNETT: Objection.

16 Vague. Objection. Scope.

17 You may speak on your personal
18 capacity but not on behalf of DEA in
19 response to this question.

20 THE WITNESS: I was expecting
21 that over time they would use the same
22 procedures for all the pharmacies that
23 they were dealing with to be certain
24 that there wasn't a problem that they
25 wouldn't see without the extra due

1 diligence.

2 QUESTIONS BY MR. EPPICH:

3 Q. And the problem that they were
4 to be looking for was whether or not they
5 were an Internet pharmacy?

6 A. An Internet pharmacy or any
7 pharmacy that was selling drugs for other
8 than legitimate medical purpose.

9 Q. Such as a pill mill, correct?

10 A. Yes.

11 Q. Now, during the distributor
12 briefings, you told distributors that you
13 were not concerned with large retail chain
14 pharmacies at the time, correct?

15 A. No.

16 Q. That's not correct?

17 A. I don't believe so.

18 Q. Do you recall instructing
19 distributors at the distributor briefings to
20 conduct due diligence on retail chain
21 pharmacies?

22 A. I don't recall that we made a
23 distinction between retail chain pharmacies
24 and independent pharmacies.

25 Q. In asking the distributors to

1 conduct this additional diligence, you
2 understood that distributors did not have
3 access to all of the distribution and sales
4 data from each of their pharmacy customers,
5 correct?

6 A. Yes.

7 Q. And you also understood the
8 distributors would not be able to identify
9 all of the bad actors within the supply chain
10 with this additional diligence, correct?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: I didn't expect
14 that they could immediately identify
15 everyone, no.

16 QUESTIONS BY MR. EPPICH:

17 Q. DEA -- or let me strike that.

18 It wasn't your intention that
19 distributors became deputized agents to the
20 DEA, was it?

21 MR. BENNETT: Objection.

22 Vague. Argumentative.

23 THE WITNESS: No.

24 QUESTIONS BY MR. EPPICH:

25 Q. I would like to return to the

1 2007 presentation that you provided to
2 industry with ABDC in September of 2007. I
3 believe it's marked as Exhibit 17.

4 So the primary purpose, or a
5 primary purpose --

6 MR. BENNETT: Counsel, I'm
7 sorry, I just want to make sure I have
8 the right exhibit.

9 You said 17, which I believe
10 was Amerisource -- represented to be
11 AmerisourceBergen's presentation, not
12 Mr. Mapes' presentation. I think he
13 said he'd never seen it.

14 I just want to make sure since
15 your question said the one "you"
16 presented at the conference.

17 MR. EPPICH: Thank you. Thank
18 you, Mr. Bennett. Let me strike that
19 question.

20 MR. BENNETT: Okay.

21 QUESTIONS BY MR. EPPICH:

22 Q. I'd just like to direct you to
23 Exhibit 17.

24 Now, Mr. Mapes, you were
25 present for the presentation by ABDC on

1 September 11, 2007; is that correct?

2 A. Yes.

3 Q. And you asked ABDC to present
4 this information to the industry at this
5 conference, correct?

6 MR. BENNETT: Objection.

7 Mischaracterizes prior testimony.

8 THE WITNESS: They were asked
9 to present it. I didn't personally
10 ask them, but someone within DEA did.

11 QUESTIONS BY MR. EPPICH:

12 Q. Thank you for that
13 clarification.

14 And someone from the DEA asked
15 ABDC to provide this presentation to educate
16 the other distributors in the industry on the
17 new standards for suspicious order monitoring
18 programs; is that correct?

19 A. That's correct.

20 Q. I'd like you to turn to page 9
21 of Exhibit 17.

22 And earlier you looked at the
23 third bullet on page 9 that reads, "ABC's OMP
24 process is now based on identify, capture,
25 investigate and report suspicious orders all

1 prior to shipment."

2 Do you remember that testimony?

3 A. Yes.

4 Q. Do you agree that a
5 distributor's program that identified,
6 captured or blocked, investigated and
7 reported suspicious orders prior to shipment
8 would be in compliance with the Controlled
9 Substances Act and its regulations?

10 A. It could be, depending on what
11 their criteria for identifying suspicious
12 orders were.

13 Q. And if that criteria were
14 similar to the criteria presented in
15 Exhibit 17, then such a program would be in
16 compliance with the Controlled Substances Act
17 and its regulations, correct?

18 MR. BENNETT: Objection.

19 Incomplete hypothetical. Vague.

20 THE WITNESS: I believe it
21 could be, yes.

22 QUESTIONS BY MR. EPPICH:

23 Q. Earlier today you testified
24 about -- let me strike that.

25 Sir, would you agree with me

1 that there is an opioid crisis?

2 A. Yes.

3 Q. Would you agree that there are
4 a variety of factors that contribute to the
5 opioid crisis?

6 A. Yes.

7 Q. Illegal heroin from cartels
8 contributes to the opioid crisis?

9 MR. BENNETT: Objection.

10 Vague.

11 THE WITNESS: I would be
12 guessing at this point because I
13 haven't currently kept up with the
14 intelligence on those kind of issues.

15 QUESTIONS BY MR. EPPICH:

16 Q. Well, in your time at the DEA,
17 was illegal heroin from cartels contributing
18 to an opioid crisis?

19 MR. BENNETT: Objection.

20 Foundation. Objection. Scope.

21 You're not authorized to
22 disclose information from specific DEA
23 investigations, activities or
24 intelligence that has not been
25 publicly disseminated.

1 To the extent that you can
2 answer this question without
3 disclosing nonpublic DEA information,
4 you can answer.

5 THE WITNESS: I believe
6 generally the opioid crisis started
7 after I left DEA. There was heroin,
8 the source of which I don't know, but
9 there was heroin available, illicit.

10 QUESTIONS BY MR. EPPICH:

11 Q. When do you believe the opioid
12 crisis started?

13 A. I don't know.

14 Q. Would you agree with me that
15 diversion can occur in many different ways?

16 A. Yes.

17 Q. For example, opioids can be
18 stolen from a delivery truck; that's
19 diversion, correct?

20 A. Yes.

21 Q. Someone could go into their
22 grandmother's cabinet and take their
23 grandmother's opioids that she was prescribed
24 for a legitimate purpose; that would be
25 diversion?

1 A. Yes.

2 Q. Someone could take opioids from
3 a friend who was prescribed the opioids for
4 legitimate reasons; that would be diversion,
5 wouldn't it?

6 A. Yes.

7 Q. Distributors have nothing to do
8 with opioids that are diverted when the
9 opioids are stolen from friends or family
10 members, do they?

11 A. No, they don't.

12 Q. The vast majority of diversion
13 occurs once opioids leave the closed system
14 of distribution; would you agree with that?

15 A. I don't know that to be true or
16 not.

17 Q. Would you agree that
18 distributors cannot control what happens to
19 pills diverted outside the closed -- let me
20 strike that.

21 You would agree that
22 distributors cannot control what happens to
23 pills once those pills are delivered to their
24 pharmacy customers, correct?

25 MR. BENNETT: Objection. Form.

1 You can answer.

2 THE WITNESS: That's correct.

3 QUESTIONS BY MR. EPPICH:

4 Q. Are you familiar with the term
5 "overprescribing"?

6 A. Yes.

7 Q. What is overprescribing?

8 A. It's when a prescriber
9 prescribes more controlled substances than
10 are necessary or prescribes controlled
11 substances to people that it may not be
12 necessary for.

13 Q. Is overprescribing a form of
14 diversion?

15 A. Yes.

16 Q. Overprescribing is a form of
17 diversion even if the prescriber is
18 well-intentioned and believes there's a
19 legitimate medical purpose for prescribing
20 the amount and dosage that he or she
21 prescribed?

22 MR. BENNETT: Objection. Form.
23 Calls for speculation. Scope.

24 THE WITNESS: It could be.

25

1 QUESTIONS BY MR. EPPICH:

2 Q. But it's not always, is it,
3 sir?

4 A. I don't think so.

5 Q. You'd agree with me the
6 distributors have no insight into determining
7 whether a doctor has overprescribed opioids
8 to her patient?

9 MR. BENNETT: Objection. Form.
10 Calls for speculation. Incomplete
11 hypothetical.

12 THE WITNESS: Generally not.

13 QUESTIONS BY MR. EPPICH:

14 Q. Are you familiar with the term
15 "illegal prescribing"?

16 A. Yes.

17 Q. What is illegal prescribing?

18 A. Prescribing controlled
19 substances for other than a legitimate
20 medical purpose.

21 Q. Is illegal prescribing a form
22 of diversion?

23 A. Yes.

24 Q. You'd agree with me that
25 illegal prescribing contributes to the opioid

1 crisis?

2 A. Yes.

3 Q. Earlier today you testified
4 about meetings that you had with the
5 plaintiffs' counsel in 2018.

6 Do you remember that testimony?

7 A. Yes.

8 Q. I believe you said you had two
9 meetings, one in the summer and one in the
10 fall of 2018, correct?

11 A. Yes.

12 Q. Now, did you -- during those
13 meetings with the plaintiffs' counsel in
14 2018, did you tell plaintiffs' counsel that
15 the DEA had approved the distributors'
16 submission of excessive purchase reports
17 after orders had been shipped?

18 A. I believe that was discussed,
19 yes.

20 Q. Did you tell plaintiffs'
21 counsel during those meetings that in your
22 experience excessive purchase reports
23 complied with the requirements of the
24 Controlled Substances Act and its
25 regulations, at least for your time at DEA

1 between 1977 and the distributor briefings?

2 A. Yes.

3 Q. Did you tell plaintiffs'
4 counsel during these meetings in 2018 that
5 the Controlled Substances Act and its
6 regulations do not include a no shipping
7 requirement?

8 A. I don't believe so.

9 Q. You didn't discuss the no
10 shipping requirement?

11 A. I don't recall that
12 specifically.

13 Q. During these meetings with the
14 plaintiffs' counsel in 2018, did you tell
15 plaintiffs' counsel the distributor briefings
16 focused on Internet pharmacy issues?

17 A. Yes.

18 Q. Did you tell plaintiffs'
19 counsel that the additional diligence you
20 requested of distributors at these
21 distributor briefings was to help identify
22 Internet pharmacies?

23 A. I don't recall specifically
24 that was how it was worded.

25 Q. But something similar?

1 A. Yes.

2 Q. At these meetings with
3 plaintiffs' counsel in 2018, did you tell
4 plaintiffs' counsel that distributors had no
5 access to the ARCOS data submitted by other
6 distributors?

7 A. I don't believe so.

8 Q. Did you discuss ARCOS data with
9 the plaintiffs' counsel in 2018?

10 A. There was a discussion of ARCOS
11 data, what it consists of and what's
12 available.

13 Q. Did you discuss who had access
14 to ARCOS data during your meetings with
15 plaintiffs' counsel?

16 A. I don't recall if we did.

17 Q. After your discussions with the
18 plaintiffs' counsel, the plaintiffs did not
19 contact you to ask you to serve as an expert
20 for plaintiffs in this case, correct?

21 A. That's correct.

22 Q. Do you recall what other topics
23 you discussed with plaintiffs' counsel during
24 these meetings in 2018?

25 A. Not really. It was just a

1 broad range of topics, but I can't come up
2 with any particular one.

3 Q. Do you recall the names of any
4 attorneys present at the meetings with
5 plaintiffs' counsel in 2018?

6 A. No, I don't at this point.

7 Q. If you look to your right, do
8 you see any of the plaintiffs' counsel here
9 today that attended that meeting?

10 A. There's a couple that may have
11 been at the meeting, at one of the meetings,
12 yes.

13 Q. Do you remember any of their --
14 can you point to any of those individuals,
15 sir?

16 MR. FARRELL: We're just
17 waving.

18 THE WITNESS: Yeah, they're
19 just waving.

20 MR. LANIER: None of us were
21 there.

22 THE WITNESS: Yeah, I don't
23 see...

24 QUESTIONS BY MR. EPPICH:

25 Q. Okay. Now, you mentioned that

1 Mr. Rannazzisi contacted you to join
2 plaintiffs' counsel at this meeting?

3 A. That's correct.

4 Q. Do you remember that testimony?

5 Have you had any conversations
6 with Mr. Rannazzisi outside of these two
7 meetings with Mr. Rannazzisi about the opioid
8 crisis?

9 A. Before the meetings, yes.

10 Q. And when were those
11 conversations?

12 A. I don't recall the exact dates
13 or even approximately when they were. We had
14 a couple of phone calls and...

15 Q. Were they just prior to your
16 first meeting in 2018 with the plaintiffs'
17 counsel, or were they some years prior?

18 A. More along the lines of months
19 prior.

20 Q. Do you recall what you
21 discussed with Mr. Rannazzisi during those
22 conversations?

23 A. A little bit about opioids and
24 a lot about people that we knew and where
25 they were and that kind of thing.

1 Q. During your meetings
2 with plaintiff --

3 MR. LANIER: Can I interrupt
4 for just a moment? I apologize.

5 The record on 218, line 16, has
6 me saying, "One of us was there,"
7 Ms. Campbell.

8 It should be "none of us was
9 there," is what I said.

10 Thank you.

11 QUESTIONS BY MR. EPPICH:

12 Q. If there was a question
13 pending, I'll strike it and start over.

14 Mr. Mapes, during the meetings
15 with plaintiffs' counsel in 2018, were there
16 any other former DEA employees present at the
17 meeting?

18 A. Joe Rannazzisi was present at
19 both, but he was the only former DEA employee
20 that was there besides myself.

21 MR. EPPICH: Thank you, sir. I
22 have no further questions at this
23 time, and I'll turn you over to my
24 colleague, Mr. Stephens.

25 VIDEOGRAPHER: Going off

1 record. The time is 4:20.

2 (Off the record at 4:20 p.m.)

3 VIDEOGRAPHER: We're going on
4 the record. Beginning of Media
5 File 10. The time is 4:34.

6 EXAMINATION

7 QUESTIONS BY MR. STEPHENS:

8 Q. Mr. Mapes, good afternoon. My
9 name's Neal Stephens. I'm from the Jones Day
10 law firm, and I represent Walmart.

11 We met earlier today, but you
12 and I have never spoken before?

13 A. That's correct.

14 Q. Okay. I'll also be asking you
15 some questions, not just on Walmart's behalf
16 but also on behalf of retail chain
17 pharmacies. And for your benefit, that will
18 include CVS, Rite Aid, Walgreens and HBC and
19 Giant Eagle.

20 Okay?

21 A. Yes.

22 Q. Okay. All right.

23 And since I'm going last, I've
24 carved out a lot of material out of my
25 outline, but I do have a couple follow-up

1 questions on some of the topics that you've
2 already testified to today.

3 Okay?

4 A. Okay.

5 Q. And the first one is, there was
6 a series of questions from a couple of my
7 colleagues that related to shipping orders
8 that had been flagged as suspicious.

9 Do you recall that line of
10 questions?

11 A. Yes.

12 Q. And you had indicated that at
13 some point you were aware that registrants
14 had a practice of shipping orders that had
15 been reported as suspicious.

16 Do you recall that?

17 A. That had been reported before
18 2005 in excess -- in suspicious or excessive,
19 that they had shipped those.

20 Q. I'm just -- right.

21 So my point is that you were
22 just aware that there had been a practice at
23 some point in time that orders that had been
24 flagged as potentially suspicious had still
25 been shipped. I'm just trying to reorient

1 you --

2 A. Yes.

3 Q. -- to that testimony. Okay?

4 Now, is it fair --

5 MR. BENNETT: Objection.

6 Mischaracterizes his testimony. He
7 said suspicious or excessive, not just
8 suspicious.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. Is it fair to say that
11 you're not aware of any deadline that DEA set
12 that changed this practice related to the
13 shipping of suspicious orders?

14 A. I'm aware that the practice was
15 changed as we had meetings with wholesalers
16 in 2005 and beyond; that then they changed
17 from sending the excessive or suspicious
18 orders after the fact, and they started doing
19 it ahead of the fact and then resolving that
20 suspicion before they shipped.

21 Q. Okay. Mr. Mapes, but are you
22 aware of any deadline that was set, any date
23 certain set by DEA sent out to the
24 registrants, as to what date that practice
25 had to change?

1 MR. BENNETT: Objection. Asked
2 and answered.

3 THE WITNESS: I'm not aware of
4 a specific deadline.

5 QUESTIONS BY MR. STEPHENS:

6 Q. Okay. All right. Another
7 topic that you addressed earlier today in the
8 first session of questioning related to what
9 DEA's expectations were of various
10 registrants about how they designed their SOM
11 system.

12 Do you recall that line of
13 questions?

14 A. Yes.

15 Q. And just to reorient you, it
16 was basically along the lines of your
17 expectation was that a SOMs system for a
18 registrant was not a one-size-fits-all
19 proposition, correct?

20 A. Correct.

21 Q. It would depend on the
22 registrant's business model, right?

23 A. Yes.

24 Q. Okay. And it's a situation
25 where, for example, some distributors supply

1 hospitals and some don't, right?

2 A. That's correct.

3 Q. And some distributors would
4 supply hospice centers, for example, and
5 other registrants don't?

6 A. Correct.

7 Q. Okay. And some distributors
8 might supply independent pharmacies that the
9 distributor does not own, right?

10 A. Yes.

11 Q. But other distributors, like
12 retail chain pharmacies, do not supply
13 independent pharmacies that they do not own,
14 right?

15 A. Correct.

16 Q. Retail chain pharmacies
17 commonly use a self-distribution model where
18 they only distribute through to chain stores
19 that the retail chain pharmacy owns; is that
20 fair?

21 A. Yes.

22 Q. And so, for example, you'd
23 agree that during your tenure at DEA, Walmart
24 distribution centers only distributed
25 controlled substances to Walmart store

1 pharmacies, fair?

2 A. Yeah, that's my understanding.

3 Q. Okay. And for CVS, CVS would
4 have done the same; they would have only
5 supplied through to CVS stores?

6 A. Yes.

7 Q. And Rite Aid would have only
8 distributed through to Rite Aid stores?

9 A. Yes.

10 Q. And Walgreens would have only
11 distributed through to Walgreens stores?

12 A. Yes.

13 Q. And my last example, HBC, Giant
14 Eagle would have only distributed through to
15 HBC, Giant Eagle stores, fair?

16 A. I don't know about that
17 particular retail chain, so I can't really
18 comment.

19 Q. Okay. During your tenure at
20 DEA, did you think that a SOM system for a
21 retail chain pharmacy who only distributes to
22 pharmacies that it owns may be different than
23 a SOM system for a distributor who
24 distributes to pharmacies that it doesn't
25 own?

1 A. Yes.

2 Q. And would you agree that it
3 could be reasonable for a retail chain
4 pharmacy like Walmart to not have to include
5 all of the compliance measures in its SOM
6 systems that might be necessary for a
7 distributor who distributes controlled
8 substances to customers that the distributor
9 does not own?

10 MR. BENNETT: Objection.

11 Scope. Vague. Incomplete
12 hypothetical.

13 You can answer.

14 THE WITNESS: Yes, I agree
15 there could be differences between the
16 systems for those two organizations.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Okay. Would you agree that
19 during your tenure at DEA you expected that
20 each registrant would take reasonable steps
21 to try to avoid shipping to customers who
22 would divert the controlled substances?

23 A. Yes.

24 Q. And would you agree that one
25 key point of the Controlled Substances Act is

1 that you wanted distributors to set up their
2 supply chain so they took reasonable steps to
3 try to avoid supplying controlled substances
4 to customers who may divert them?

5 A. Yes.

6 Q. And is it fair to say that if a
7 distributor did not supply customers who
8 diverted opioids, the distributor was
9 behaving reasonably?

10 MR. BENNETT: Objection.

11 Scope. Incomplete hypothetical.

12 You can answer.

13 THE WITNESS: It would be fair
14 to say, yes, that if no one that they
15 distributed to was diverting drugs,
16 that their systems were appropriate.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Okay. As an example, would you
19 agree that a distributor was acting
20 reasonably if it structured its business so
21 it did not distribute controlled substances
22 to rogue Internet pharmacies and only
23 distributed to retail chain pharmacies who
24 were among the registrants who did not divert
25 controlled substances?

1 MR. BENNETT: Objection.

2 Scope. Incomplete hypothetical.

3 Calls for speculation.

4 THE WITNESS: If they did not
5 distribute to Internet pharmacies and
6 did not distribute to anyone who
7 diverted, my opinion is that
8 they're being reasonable, yes.

9 QUESTIONS BY MR. STEPHENS:

10 Q. As a general matter, during
11 your tenure as a diversion investigator,
12 would you agree that you focused your
13 anti-diversion efforts where you saw
14 diversion occurring?

15 A. Where we saw diversion
16 occurring and where we saw where we could
17 influence that, whether it was at that level
18 or another level.

19 Q. Okay. Would you agree that in
20 the 2005, 2006 time frame, you saw diversion
21 of controlled substances occurring in rogue
22 Internet pharmacies?

23 A. Yes, among other places.

24 Q. Okay. And during that time
25 frame, the 2005, 2006 time frame, rogue

1 Internet pharmacies became a focus for you
2 and other diversion investigators at DEA?

3 A. They did.

4 Q. Would you agree that in the
5 2006 era, rogue Internet pharmacies presented
6 you and your colleagues at DEA with the
7 greatest threat of diversion that was
8 operating within the closed system of
9 distribution that DEA regulates?

10 A. I don't know that they were the
11 greatest threat, because there was still all
12 the other situations with doctors who were
13 overprescribing and pharmacies who were
14 selling without prescriptions and those
15 things. So I can't really quantify which was
16 the biggest threat.

17 Q. Okay. But would you agree,
18 Mr. Mapes, that in this time period, this
19 2005, 2006 time frame, the onset of rogue
20 Internet pharmacies led DEA to institute its
21 Internet Distributor Initiative that you've
22 testified earlier today?

23 A. Yes.

24 Q. And as part of that effort, you
25 met with wholesale distributors to educate

1 them about the issues presented by rogue
2 Internet pharmacies?

3 A. That's correct.

4 Q. Can you recall how many
5 meetings you personally attended?

6 A. No.

7 Q. Can you estimate?
8 Was it more than ten?

9 A. My estimate is 10 or 12.

10 Q. Okay. But it wouldn't have
11 been more than 15?

12 A. I'm not really certain.

13 Q. Okay. How about this: It
14 wouldn't have been more than 20?

15 A. Probably not.

16 Q. Okay. Were there others? Did
17 you have other colleagues at DEA during this
18 time frame that you're aware of who were also
19 meeting with wholesale distributors on this
20 distributor briefing?

21 A. There were others after I
22 retired from DEA who were doing it. I think
23 I was involved in every one of the
24 distributor briefings while I was still
25 there.

1 Q. Okay. And can you refresh me
2 on when these briefings started?

3 Was it 2005?

4 A. Yes.

5 Q. Okay. And you retire in
6 mid-2007?

7 A. October of 2007, yes.

8 Q. You remember that date, right?

9 A. Yes.

10 Q. Okay. After 30 years, you can
11 remember that date, right?

12 Okay. Fair enough.

13 All right. So in between 2005
14 and October of 2007, your recollection is, is
15 that there were about 12 or so Internet
16 distributor briefings that you conducted with
17 wholesale distributors?

18 A. Yes.

19 Q. Okay. And was each of those
20 like a one-on-one meeting between DEA and one
21 wholesale distributor?

22 A. One distributor, several people
23 from the distributor at times, sometimes an
24 individual, and sometimes with counsel,
25 sometimes without.

1 Q. Okay. So my point, Mr. Mapes,
2 is your recollection of the entirety of the
3 number of wholesale distributors who received
4 this briefing during your career at DEA is
5 about 12?

6 A. About that.

7 Q. Okay. How did DEA -- or how
8 did you select which wholesale distributor
9 was going to receive the briefing?

10 A. We started at first with
11 Amerisource, Cardinal and McKesson because
12 they're obviously those with the largest
13 volume, and then we went to lower volume
14 distributors such as HD Smith and others that
15 were maybe regional distributors, not
16 nationwide distributors, that kind of thing.

17 Q. Okay. So you've identified
18 four.

19 Can you recall any of the other
20 eight or so that you met with during your
21 career?

22 A. Not right now, I can't.

23 Q. You did not meet with Walmart
24 to provide an Internet distributor briefing
25 between 2005 and 2007, correct?

1 A. That's correct.

2 Q. Do you agree that during this
3 time frame DEA acknowledged in presentations
4 that it made that no chain pharmacies were
5 rogue pharmacies?

6 MR. BENNETT: You can answer.

7 THE WITNESS: I don't believe
8 that was in DEA presentations.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. Let me see if I can
11 refresh your recollection.

12 A. Okay.

13 (Mapes Exhibit 19 marked for
14 identification.)

15 QUESTIONS BY MR. STEPHENS:

16 Q. So I'm going to show you what's
17 been marked as Deposition Exhibit Number 19.
18 It's a document that is Bates-numbered
19 US-DEA-00002413.

20 And if you look at the very
21 first slide, it says "Internet Pharmacies."
22 It's got Mr. Rannazzisi's name there, and
23 it's a slide deck.

24 Do you see that?

25 A. Yes.

1 Q. And I'd ask you to turn to
2 Slide 50 in the presentation. It's almost
3 all the way at the back, Mr. Mapes.

4 Do you see that?

5 A. I do.

6 Q. And Slide 50 details -- the
7 title is "The Rogue Pharmacy."

8 Do you see that?

9 A. Yes.

10 Q. Do you see the second bullet?

11 A. Yes.

12 Q. What does the second bullet
13 say?

14 A. "No chain pharmacies."

15 Q. Okay. And does this appear to
16 you to be a presentation that DEA provided on
17 the topic of Internet pharmacies?

18 MR. BENNETT: Objection.

19 Foundation.

20 And I also object that the
21 witness did not have a chance to
22 review the entire document or
23 understand the context of the
24 particular slide that you pointed him
25 out to.

1 THE WITNESS: It appears to be
2 a presentation that Mr. Rannazzisi did
3 concerning Internet pharmacies. I
4 don't know when or to which group or
5 anything like that, and I haven't seen
6 this before.

7 QUESTIONS BY MR. STEPHENS:

8 Q. If you look at the -- page 2 or
9 slide 2, you'll see a date at the bottom,
10 March of 2007.

11 Do you see that?

12 A. Yes.

13 Q. Okay. And you were still at
14 DEA in March of 2007?

15 A. Yes.

16 Q. Okay. All right. I'm finished
17 with that exhibit, Mr. Mapes.

18 In enforcing the Controlled
19 Substances Act during your tenure at DEA, did
20 you believe that every registrant was
21 entitled to due process in every diversion
22 investigation that you conducted?

23 MR. BENNETT: You can answer.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MR. STEPHENS:

2 Q. Why?

3 A. Just part of the system.

4 Q. But what do you mean "part of
5 the system"?

6 A. That if we find something that
7 we think is wrong, that they, either in a
8 response to a letter of admonition or an
9 administrative hearing or any other forum,
10 they provide their take on the situation.

11 Q. Okay. Do you believe that DEA
12 must separately assess the facts as to each
13 individual actor in DEA's closed system of
14 distribution to determine whether a
15 particular registrant has violated the
16 Controlled Substances Act?

17 MR. BENNETT: You can answer.

18 THE WITNESS: Yes, I believe
19 that they need to look at each
20 registrant individually rather than
21 looking at an entire group.

22 QUESTIONS BY MR. STEPHENS:

23 Q. So would you agree that every
24 manufacturer, distributor and retail chain
25 pharmacy is entitled to individualized review

1 of its own conduct before being accused for
2 potential violations of the Controlled
3 Substances Act committed by somebody else?

4 MR. BENNETT: Objection.

5 Vague. Scope.

6 You can answer in your personal
7 capacity.

8 THE WITNESS: Yeah, I believe
9 that they -- they should have that
10 opportunity, yes.

11 QUESTIONS BY MR. STEPHENS:

12 Q. So, for example, would you
13 agree that you should not accuse a retail
14 chain pharmacy of improper distribution where
15 a rogue Internet pharmacy diverts controlled
16 substances and there is no evidence that the
17 retail chain pharmacy distributed the
18 controlled substances to the rogue Internet
19 pharmacy?

20 MR. BENNETT: Objection.

21 Vague. Scope. Incomplete
22 hypothetical.

23 You can answer in your personal
24 capacity.

25 THE WITNESS: Yes, I believe

1 that each should be treated
2 differently based on the facts and
3 circumstances.

4 QUESTIONS BY MR. STEPHENS:

5 Q. So let's go back to another
6 topic that you mentioned briefly this
7 morning. You had mentioned a DEA 6 report.

8 Do you remember talking about
9 that when you were talking about your time in
10 Detroit and Cleveland as diversion
11 investigator?

12 A. Yes.

13 Q. Can you describe what a DEA 6
14 report is?

15 A. A DEA 6 is just a form for
16 reporting investigative information.

17 Q. And one of the purposes of
18 reporting it in a DEA 6 is that information
19 is preserved for other investigators to use
20 on other investigations if the information
21 that you put in there might be relevant to
22 them?

23 MR. BENNETT: Objection.

24 Scope.

25 You're not authorized to

1 disclose law enforcement sensitive
2 information or confidential
3 investigative techniques.

4 You may answer this question
5 yes or no only on whether that would
6 be one of your purposes in doing a
7 DEA 6.

8 THE WITNESS: Yes, it would be.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. You also, in the course
11 and scope of your duties as a diversion
12 investigator over your 30 years at DEA, you
13 had the opportunity to use DEA's NADDIS
14 database, correct?

15 MR. BENNETT: Objection.

16 Scope.

17 You may answer that question
18 yes or no only on whether you used the
19 NADDIS database.

20 THE WITNESS: Yes, I did.

21 QUESTIONS BY MR. STEPHENS:

22 Q. And the NADDIS database stands
23 for Narcotics and Dangerous Drugs Information
24 System?

25 MR. BENNETT: You can answer

1 that question, if you know.

2 THE WITNESS: Yes.

3 QUESTIONS BY MR. STEPHENS:

4 Q. Okay. NADDIS -- at a very
5 general, high level, NADDIS is a database
6 where DEA agents will input information about
7 subjects of investigation, including any
8 contact information or biographical
9 information they might have on that subject?

10 MR. BENNETT: Objection.

11 Scope.

12 You are not authorized to
13 disclose information regarding
14 confidential databases maintained by
15 the DEA or the information contained
16 therein.

17 And so to the extent you can
18 answer without disclosing the
19 confidential information or ways that
20 the database is used, you can answer.

21 Beyond that, you are not
22 authorized to disclose information
23 regarding specific databases that are
24 nonpublic.

25 THE WITNESS: Okay.

1 It's a database where
2 headquarters inputs information from
3 DEA reports of investigation.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Okay. And it's preserved for
6 other agents in other locations to use
7 downstream if there might be something
8 helpful there?

9 MR. BENNETT: Objection.
10 Scope.

11 You are not authorized to
12 disclose confidential law enforcement
13 investigative techniques.

14 You may answer yes or no only
15 as far as whether you used NADDIS for
16 the purpose -- for that purpose.

17 THE WITNESS: Yes, I did.

18 QUESTIONS BY MR. STEPHENS:

19 Q. Okay. DEA diversion
20 investigators also use something called the
21 RICS database; is that accurate?

22 A. I never heard of that.

23 Q. You have not heard of the
24 database called the Registrant Information
25 Consolidation System database?

1 A. I have not.

2 Q. Would you agree that narcotics
3 enforcement, based on your experience, is
4 more effective when federal agencies
5 cooperate with each other on investigations?

6 MR. BENNETT: Objection.
7 Scope.

8 You may answer that with your
9 personal opinion, but you are not
10 speaking on behalf of DEA.

11 THE WITNESS: Yes, my personal
12 opinion is that cooperation with other
13 agencies is important.

14 QUESTIONS BY MR. STEPHENS:

15 Q. And your personal opinion,
16 based on all of your personal experience as a
17 DEA diversion investigator, would be that
18 when both agencies share information with
19 each other, the agencies can make more
20 informed decisions about how to structure
21 their investigations?

22 MR. BENNETT: Objection.
23 Vague. Objection. Scope.

24 You may give your personal
25 opinion, if you understand the

1 question.

2 THE WITNESS: Yes, they can.

3 QUESTIONS BY MR. STEPHENS:

4 Q. And would you agree as a
5 general matter, based on your 30 years of
6 experience at DEA, that the sharing of
7 information between investigative agencies
8 leads to more collaboration among law
9 enforcement, which often leads to more
10 successful investigation and reduces
11 diversion?

12 MR. BENNETT: Same objection.

13 THE WITNESS: I would agree
14 that it leads to more collaboration
15 and effective investigations.

16 QUESTIONS BY MR. STEPHENS:

17 Q. Okay. And would you agree,
18 based on your experience in your cases that
19 you've worked over the years, that diversion
20 can be reduced when DEA chooses to share
21 information with other federal, state and
22 local law enforcement agencies?

23 MR. BENNETT: Objection.

24 Scope.

25 You are not authorized to speak

1 on behalf of DEA.

2 If you have a personal opinion,
3 you may give your personal opinion
4 based on your personal experiences.

5 THE WITNESS: My opinion is
6 that it's hard to quantify diversion
7 and whether or not sharing of
8 information reduces diversion.

9 So it does lead to more
10 investigations, but whether those
11 reduce diversion or not, I'm not
12 certain.

13 QUESTIONS BY MR. STEPHENS:

14 Q. Would you agree that drug
15 traffickers and diverters are the ones who
16 potentially benefit if DEA decides to isolate
17 itself from folks who could help advance
18 DEA's diversion investigations?

19 MR. BENNETT: Objection.

20 Vague. Calls for speculation. Scope.

21 You are not authorized to speak
22 on behalf of DEA.

23 If you have personal
24 information that you can form a
25 personal opinion, you may give your

1 personal opinion.

2 THE WITNESS: I've forgotten
3 the question now.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Sure.

6 Would you agree that drug
7 traffickers and diverters are the ones who
8 potentially benefit if DEA decides to isolate
9 itself from individuals who could help
10 advance DEA's diversion investigations who
11 are outside of DEA?

12 A. If those individuals are other
13 law enforcement agencies, yes.

14 Q. Okay. Would you agree that DEA
15 should be ready, willing and able to share
16 information with any good faith registrant
17 who could help DEA prevent diversion?

18 MR. BENNETT: Objection.

19 Scope. Vague. Incomplete
20 hypothetical. Calls for speculation.

21 You are not authorized to speak
22 on behalf of DEA. If you have
23 personal experiences which will allow
24 you to form a personal opinion, you
25 may give your personal opinion.

1 THE WITNESS: I would agree
2 with that as long as the information
3 sharing is within the bounds of that
4 that's allowed by law and regulation.

5 QUESTIONS BY MR. STEPHENS:

6 Q. Okay. Based on your experience
7 at DEA, as you were trying to make a
8 determination as to whether to bring an
9 action against someone, would you agree that
10 to make the most accurate assessment of the
11 charging decision that was in front of you,
12 that you wanted as much relevant information
13 as possible about the suspect's action in
14 front of you so you can make an accurate,
15 informed decision on what DEA should do?

16 MR. BENNETT: Objection.

17 Vague. Form.

18 You can answer.

19 THE WITNESS: Yes.

20 QUESTIONS BY MR. STEPHENS:

21 Q. If your colleagues down the
22 road at FBI withheld relevant information
23 from you on an investigation so that you only
24 had partial information about your suspect's
25 conduct, would you agree that it would make

1 it harder for you to make an accurate,
2 informed decision about what to do?

3 MR. BENNETT: Objection. Form.
4 Scope. Vague. Calls for speculation.
5 You can answer.

6 THE WITNESS: I never had the
7 situation personally where the FBI
8 withheld information. It could be
9 detrimental if they did.

10 QUESTIONS BY MR. STEPHENS:

11 Q. Okay. And since it could be
12 detrimental, would you agree that the sharing
13 of information between FBI and DEA in the
14 question I just posed to you would reduce the
15 number of potential mistakes a law
16 enforcement agency might make on an important
17 decision in an investigation?

18 MR. BENNETT: Objection. Form.
19 Scope. Vague. Calls for speculation.
20 Incomplete hypothetical.

21 You can answer.

22 THE WITNESS: Yes, I would
23 agree.

24 QUESTIONS BY MR. STEPHENS:

25 Q. Okay. Given your general

1 duties included some leadership positions at
2 DEA and at headquarters, I'd like to ask you
3 some questions about leadership principles
4 that you may have followed during your time
5 at DEA.

6 Okay?

7 A. Okay.

8 Q. All right. So based on your
9 experience as a leader at DEA, would you
10 agree that the success of an organization
11 often depends in part on tactical decisions
12 made by its leader?

13 MR. BENNETT: Objection.

14 Vague.

15 THE WITNESS: Yes.

16 QUESTIONS BY MR. STEPHENS:

17 Q. Do you agree that good leaders
18 hold themselves accountable for the decisions
19 they make?

20 A. Yes.

21 Q. If your goal is to reduce
22 diversion, would you agree that a good leader
23 at DEA should be willing to share information
24 about diversion issues with good faith
25 registrants so the registrants may be able to

1 use that information to help DEA decrease
2 diversion?

3 MR. BENNETT: Objection. Form.
4 Scope. Vague. Incomplete
5 hypothetical. Calls for speculation.
6 You can answer, if you have an
7 opinion.

8 THE WITNESS: Yes, they should,
9 but again within the constraints of
10 what's authorized by law and
11 regulation.

12 QUESTIONS BY MR. STEPHENS:

13 Q. Would you agree that good
14 leaders at DEA also ensure that their
15 personal conduct and the conduct of their
16 team comports to the standards that they
17 expect others to follow?

18 MR. BENNETT: Objection.
19 Vague.

20 THE WITNESS: I don't quite
21 understand the question.

22 If you're saying that the DEA
23 employees comport to the same
24 standards they're of expecting
25 registrants, they're in a different

1 business and doing different things,
2 so...

3 QUESTIONS BY MR. STEPHENS:

4 Q. Well, let me ask it this way.

5 Do you agree that the American
6 public has a right to expect that the leaders
7 of our law enforcement agencies will lead
8 their teams in a fashion that is consistent
9 with the standards that they impose on the
10 folks that they regulate?

11 MR. BENNETT: Objection.

12 Vague. Calls for speculation.

13 THE WITNESS: It seems
14 reasonable, yes.

15 QUESTIONS BY MR. STEPHENS:

16 Q. Okay. Is it fair to say that
17 the American public has a right to expect
18 that when DEA sees diversion happening, DEA
19 will not simply let the diversion continue to
20 happen?

21 MR. BENNETT: Objection.

22 Vague. Incomplete hypothetical.

23 Calls for speculation.

24 THE WITNESS: Yes, but within
25 the bounds of the available resources.

1 QUESTIONS BY MR. STEPHENS:

2 Q. Based on your experience as a
3 leader at DEA, if DEA expects registrants it
4 regulates to take reasonable measures to
5 prevent diversion, is it fair for the
6 American public to expect that DEA will do
7 the same?

8 MR. BENNETT: Objection.

9 Incomplete hypothetical. Vague.
10 Calls for speculation. Scope.

11 You can answer, if you have an
12 opinion.

13 THE WITNESS: I really don't
14 have an opinion on that.

15 QUESTIONS BY MR. STEPHENS:

16 Q. All right. Well, how about
17 this.

18 If DEA has information that a
19 shipment of controlled substances headed to
20 Customer X will be diverted by Customer X, do
21 you think that the American public should be
22 able to rely on DEA to step in and intercept
23 that shipment of controlled substances before
24 those controlled substances reach Customer X?

25 MR. BENNETT: Objection.

1 Scope. Vague. Incomplete
2 hypothetical. Calls for speculation
3 and calls for a legal conclusion.

4 THE WITNESS: I believe the DEA
5 should take some appropriate action,
6 and that should be expected.

7 QUESTIONS BY MR. STEPHENS:

8 Q. Okay. Let me switch gears here
9 a little bit.

10 And what I'd like to do is ask
11 you some questions about some of -- some of
12 the investigative techniques that DEA has
13 that may be different than what a registrant
14 might be able to do as it's setting up its
15 SOM program.

16 Okay?

17 A. Okay.

18 Q. During your tenure as a DEA
19 investigator, were there occasions where you
20 were able to identify a potential diverter
21 based on information that DEA developed as
22 opposed to information that was provided to
23 DEA by a registrant in a suspicious order
24 report?

25 MR. BENNETT: Objection.

1 Scope.

2 You may answer that question
3 yes or no only.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. STEPHENS:

6 Q. Okay. Would you agree that DEA
7 has unique law enforcement investigative
8 powers that are available to DEA to identify
9 potential diverters that are not available to
10 a registrant like Walmart?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. STEPHENS:

15 Q. Okay. DEA has subpoena power,
16 for example, correct?

17 A. That's correct.

18 Q. Walmart does not have subpoena
19 power to subpoena a doctor, correct?

20 A. Not that I'm aware of.

21 Q. Okay. Now, DEA can issue
22 subpoenas to help investigate potential
23 diversion, right?

24 MR. BENNETT: Objection. Form.

25

1 QUESTIONS BY MR. STEPHENS:

2 Q. Based on your experience, do
3 you agree that DEA can issue a subpoena to
4 help investigate potential diverters?

5 MR. BENNETT: You can answer,
6 if you know.

7 THE WITNESS: Yes.

8 QUESTIONS BY MR. STEPHENS:

9 Q. Okay. And during your time at
10 DEA, DEA collected information in diversion
11 investigation through subpoenas?

12 MR. BENNETT: Objection.
13 Scope.

14 You may answer that question
15 yes or no only.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. STEPHENS:

18 Q. To your knowledge, did Joe
19 Rannazzisi ever authorize you or anyone else
20 to share information with any registrant the
21 DEA had obtained through subpoenas?

22 MR. BENNETT: Objection.
23 Scope.

24 You may answer that question
25 yes or no only.

1 THE WITNESS: No.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Would you agree that search
4 warrants are a second vehicle that provide
5 DEA an investigative tool that registrants
6 like Walmart do not have?

7 MR. BENNETT: You can answer.

8 THE WITNESS: Yes.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. DEA can apply to a
11 magistrate judge to obtain a search warrant,
12 right?

13 A. Yes.

14 Q. And a search warrant would give
15 DEA the ability to potentially search rogue
16 pain clinics to obtain documents that might
17 advance a diversion investigation the DEA is
18 conducting?

19 A. That's correct.

20 MR. BENNETT: Objection.

21 Objection. Scope.

22 You can answer that yes or no
23 only based on your personal
24 experiences.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. STEPHENS:

2 Q. Okay. Based on your personal
3 experience, Mr. Mapes, DEA also can obtain
4 what is known as an ISP search warrant, an
5 Internet service provider search warrant,
6 which allows DEA to intercept e-mail
7 communications which would include
8 conversations between a doctor and the
9 doctor's patients that might relate to
10 diversion, true?

11 MR. BENNETT: Objection.

12 Scope.

13 You are authorized to answer
14 whether you know of a document
15 entitled an "ISP search warrant" in
16 your personal experience, yes or no
17 only.

18 THE WITNESS: No.

19 QUESTIONS BY MR. STEPHENS:

20 Q. You've never heard of an ISP
21 search warrant?

22 A. No.

23 Q. Okay. All right.

24 But just on the topic of search
25 warrants generally, we'll go to premises

1 search warrant, which is the first example I
2 gave you where you go to a magistrate, the
3 magistrate authorizes DEA to go to address X
4 and DEA conducts a search there.

5 You're familiar with those,
6 right?

7 A. Yes.

8 Q. Okay. Now, did Joe Rannazzisi
9 ever authorize, to your knowledge, anyone at
10 DEA to disclose to any registrant any
11 information obtained from a search warrant so
12 that that registrant could help DEA in a
13 diversion investigation?

14 MR. BENNETT: Objection.

15 Scope.

16 You may answer that question.

17 THE WITNESS: Not that I'm
18 aware of.

19 MR. BENNETT: Well --

20 QUESTIONS BY MR. STEPHENS:

21 Q. Okay.

22 MR. BENNETT: He's answered
23 your question.

24 I do object to the scope of
25 that. I was going to authorize him to

1 answer that yes or no only.

2 He has said not to his

3 knowledge, so we can move on.

4 QUESTIONS BY MR. STEPHENS:

5 Q. And just to reconfirm, Walmart
6 has no ability to go to a magistrate judge to
7 obtain a search warrant, right?

8 A. That's correct.

9 Q. No registrant can go to a
10 magistrate judge and seek a search warrant,
11 right?

12 A. I wouldn't say that, because
13 DEA is a registrant, so...

14 Q. Okay. Other than law
15 enforcement agencies, no private sector
16 registrant can go to a magistrate and seek a
17 search warrant; is that fair?

18 A. Yes.

19 Q. All right. The use of the
20 grand jury is a third example of an
21 investigative technique that is unique to law
22 enforcement and something that is not
23 available to private sector registrants,
24 fair?

25 MR. BENNETT: Objection.

1 Scope. Objection. Form. Calls for a
2 legal conclusion.

3 You can answer, if you know, in
4 your personal knowledge.

5 THE WITNESS: Yes.

6 MR. BENNETT: I'm sorry, I'm
7 not sure I understand his answer to
8 your question on whether somebody in
9 the private sector can go to the grand
10 jury or not.

11 QUESTIONS BY MR. STEPHENS:

12 Q. Okay. So let me restate it.

13 Based on your experience at
14 DEA, can anyone other than law enforcement
15 use the grand jury as a tool to conduct due
16 diligence on a customer?

17 A. No.

18 Q. Okay. Would you agree that the
19 grand jury is an investigative technique that
20 is available to law enforcement and law
21 enforcement only?

22 MR. BENNETT: Objection.

23 Vague. Objection. Calls for a legal
24 conclusion.

25 You can answer in your personal

1 knowledge, if you know.

2 THE WITNESS: Yes, it is a
3 tool.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Okay. And DEA can subpoena a
6 suspected diverter to the grand jury and ask
7 him questions under the penalty of perjury
8 related to whether that individual has
9 diverted any controlled substances?

10 MR. BENNETT: Objection.
11 Vague. Objection. Calls for a legal
12 conclusion. Objection. Foundation.

13 If you have any personal
14 knowledge whether DEA can subpoena a
15 suspected diverter -- oh, and
16 objection. Scope.

17 You may answer in your personal
18 knowledge.

19 THE WITNESS: My personal
20 opinion is that DEA can serve a
21 subpoena that was issued, but DEA
22 doesn't issue subpoenas.

23 QUESTIONS BY MR. STEPHENS:

24 Q. Okay. The subpoena would be
25 issued by either a federal prosecutor's

1 office, a US Attorney's office, or a state
2 prosecutor's office?

3 A. Yes.

4 Q. A district attorney's office,
5 right?

6 A. Yes.

7 Q. Okay. If DEA and the
8 prosecutors believe that a witness has lied
9 in providing testimony to a grand jury, that
10 individual could be prosecuted for perjury,
11 right?

12 MR. BENNETT: Objection.

13 Incomplete hypothetical. Calls for a
14 legal conclusion. Scope.

15 You can answer based on your
16 personal experience, if you know.

17 THE WITNESS: I haven't had the
18 personal experience of that happening,
19 no.

20 QUESTIONS BY MR. STEPHENS:

21 Q. Okay. Would you agree that
22 being able to compel witnesses to the grand
23 jury and answer questions under the penalty
24 of perjury is a very valuable tool to DEA in
25 building diversion cases?

1 MR. BENNETT: Objection.

2 Vague. Scope. Calls for a legal
3 conclusion.

4 You can answer.

5 THE WITNESS: Yes.

6 QUESTIONS BY MR. STEPHENS:

7 Q. And Walmart cannot compel
8 witnesses to testify in front a grand jury,
9 correct?

10 A. That's correct.

11 Q. And the other companies who
12 you've met today at your deposition, none of
13 them have the ability to compel any witnesses
14 to go to a grand jury; is that fair?

15 A. That's correct.

16 Q. Okay. Would you agree that
17 conducting undercover operations present a
18 fourth example where DEA has unique
19 investigative tools to conduct diversion
20 investigations?

21 MR. BENNETT: Objection.

22 Vague. Objection. Scope.

23 If you have an opinion, you may
24 answer that question yes or no only.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. STEPHENS:

2 Q. Okay. For example, based on
3 your experience conducting diversion
4 investigations, DEA can use undercover
5 officers to purchase controlled substances
6 from diverting Internet pharmacies and pain
7 clinics?

8 MR. BENNETT: Objection.

9 Scope.

10 You are not authorized to
11 disclose confidential law enforcement
12 investigative or intelligence-
13 gathering and dissemination techniques
14 whose effectiveness would thereby be
15 impaired.

16 To the extent that you can
17 answer the question without disclosing
18 confidential law enforcement
19 investigative techniques, you can
20 answer. Otherwise, you are instructed
21 not to answer.

22 THE WITNESS: Yes, they can.

23 QUESTIONS BY MR. STEPHENS:

24 Q. Okay. The undercover officers
25 in a DEA operation, for example, in a

1 diversion investigation, are allowed to
2 legally tape record the conversations that
3 they have with the operator of the business
4 that's under investigation?

5 MR. BENNETT: Objection.

6 Scope.

7 You are not authorized to
8 disclose confidential law enforcement
9 techniques or how undercover
10 investigations are done. Also, you
11 are not authorized to draw legal
12 conclusions.

13 I'm instructing you not to
14 answer that question.

15 MR. STEPHENS: On what --

16 MR. FARRELL: Sustained.

17 MR. STEPHENS: On what basis?

18 MR. BENNETT: That it's a
19 confidential law enforcement
20 investigative technique on how they do
21 investigations and what evidence they
22 gather.

23 QUESTIONS BY MR. STEPHENS:

24 Q. Are you aware, Mr. Mapes, that
25 there had been literally thousands of

1 investigations that have played out in
2 courtrooms across the United States of
3 America where United States Attorneys have
4 put DEA agents on the stand and have played
5 tapes of undercover operations to convince
6 juries to convict drug traffickers under
7 Title 21?

8 MR. BENNETT: You may answer
9 that question, based on your personal
10 knowledge, yes or no only.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. STEPHENS:

13 Q. Okay. So then undercover
14 officers can legally tape record
15 conversations that they have with the
16 operators of the businesses that DEA is
17 investigating; is that fair?

18 MR. BENNETT: Objection. Calls
19 for a legal conclusion. Scope.

20 I don't think this witness can
21 draw a legal conclusion in this
22 deposition.

23 You're asking whether he can
24 legally tape. I don't think he's both
25 authorized to do that or qualified to

1 make a conclusion. Plus, I think it's
2 an incomplete hypothetical.

3 So I'm going to instruct him
4 that he's not authorized on behalf of
5 DEA or use any DEA information in
6 answering that question.

7 MR. STEPHENS: Okay. I will
8 move on to conserve time.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Would you agree that Walmart
11 and CVS, Walgreens, Rite Aid, do not have the
12 ability to use law enforcement agents to
13 conduct undercover operations of businesses?

14 MR. BENNETT: Objection.

15 Vague. Incomplete hypothetical.

16 Calls for a legal conclusion.

17 You can answer if you have an
18 opinion.

19 THE WITNESS: No, I'm not
20 really certain about that.

21 QUESTIONS BY MR. STEPHENS:

22 Q. Okay. Are you aware that it
23 might be illegal in certain states for a
24 private actor, private company, to secretly
25 tape record conversations with other people?

1 MR. BENNETT: Objection.

2 Scope.

3 To the extent you have personal
4 information, you can answer that --
5 you can give your personal opinion.

6 Calls for a legal conclusion.

7 THE WITNESS: I don't know
8 which states may have which laws, so I
9 can't really answer that.

10 QUESTIONS BY MR. STEPHENS:

11 Q. So you don't know one way or
12 the other. Okay.

13 To your knowledge, did Joe
14 Rannazzisi ever authorize you or anyone else
15 that you know of at DEA to disclose to
16 registrants who could help DEA in diversion
17 investigations information that DEA had
18 obtained in undercover operations?

19 MR. BENNETT: Objection.

20 Scope.

21 You are not authorized to
22 disclose information regarding
23 specific DEA investigations or
24 activities. You may answer this
25 question yes or no only.

1 THE WITNESS: No.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Okay. As a fifth example of an
4 investigative technique that is unique to DEA
5 and federal law enforcement, would you agree
6 that DEA, in a local US Attorney's Office,
7 has the ability to apply to a judge for an
8 order that would allow DEA to record
9 telephone calls made by the subject of DEA's
10 investigation, a Title 3 wiretap?

11 MR. BENNETT: You can answer
12 that question.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. STEPHENS:

15 Q. And would you agree that a
16 Title 3 wiretap allows DEA to listen in to
17 every discussion over the target's telephone?

18 MR. BENNETT: Objection.
19 Scope. Calls for a legal conclusion.
20 Incomplete hypothetical.

21 You can answer, if you know.

22 THE WITNESS: Every call except
23 for those that are required to be
24 minimized.

25

1 QUESTIONS BY MR. STEPHENS:

2 Q. Okay. Very good.

3 And that's spelled out in the
4 order that the judge -- the DEA and the
5 US Attorney's Office present to the judge and
6 the judge signs, right?

7 A. Yes.

8 Q. Okay. All right. Another form
9 of electronic surveillance is a room bug.
10 Are you familiar with a room
11 bug?

12 MR. BENNETT: Objection.
13 Scope.

14 He's not authorized to disclose
15 confidential law enforcement
16 investigative or intelligence-
17 gathering techniques, the
18 effectiveness of which would be
19 impaired.

20 You may answer this question
21 yes or no only whether you are
22 familiar with the term "a room bug."

23 THE WITNESS: Yes.

24 QUESTIONS BY MR. STEPHENS:

25 Q. Okay. A room bug is like a

1 Title 3 telephonic intercept. It's a device
2 that's placed in a particular location and it
3 records, right?

4 MR. BENNETT: You can answer
5 that question yes or no only if you
6 know.

7 THE WITNESS: Yes.

8 QUESTIONS BY MR. STEPHENS:

9 Q. Okay. And in comparison to
10 DEA, which has the ability to apply to a
11 judge for these wiretaps and room bugs,
12 Walmart would not have the ability to apply
13 to a judge for a room bug or a wiretap, fair?

14 MR. BENNETT: Objection. Calls
15 for a legal conclusion.

16 You can answer in your personal
17 knowledge, if you know.

18 THE WITNESS: That's correct.

19 QUESTIONS BY MR. STEPHENS:

20 Q. And would you agree that
21 electronic surveillance can be an enormous
22 help to DEA in determining whether a suspect
23 is diverting controlled substances?

24 MR. BENNETT: Objection.
25 Vague. Scope.

1 You can answer in your personal
2 capacity if you have an opinion.

3 THE WITNESS: Yes, it could be.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Okay. And based on your
6 30 years at DEA, are you aware of any
7 situation where Joe Rannazzisi or anyone else
8 who was running the Office of Diversion
9 Control ever authorized you or anyone else at
10 DEA to disclose to a registrant who could
11 help DEA in a diversion investigation the
12 information that DEA had obtained through
13 electronic surveillance?

14 MR. BENNETT: Objection. Form.
15 Scope. Compound.

16 You're not authorized to
17 disclose any information regarding
18 specific DEA investigations or
19 activities.

20 You may answer this question
21 yes or no only, if you understand.

22 THE WITNESS: Could you restate
23 the question?

24 QUESTIONS BY MR. STEPHENS:

25 Q. Sure.

1 Based on your 30 years at DEA,
2 are you aware of any situation where anyone
3 who is running the Office of Diversion
4 Control ever authorized you or anyone else at
5 DEA to disclose to a registrant who could
6 help DEA in a diversion investigation with
7 information that DEA had obtained through
8 electronic surveillance?

9 MR. BENNETT: Same objections
10 and instruction.

11 THE WITNESS: No, I'm not.

12 QUESTIONS BY MR. STEPHENS:

13 Q. All right. Let's talk about
14 number 6, and that will be information from
15 state medical boards or state local law
16 enforcement. Okay?

17 DEA, during your tenure and on
18 investigations you worked, obtained
19 information from state and local law
20 enforcement regarding diversion
21 investigations the DEA was conducting; is
22 that accurate?

23 MR. BENNETT: Objection.

24 Scope.

25 You can answer yes or no only.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Okay. Would you agree that
4 private sector registrants like the companies
5 that you've met here today do not have the
6 ability to obtain information from state and
7 local law enforcement investi -- state and
8 local law enforcement regarding
9 investigations that state and local law
10 enforcement is conducting on suspected
11 diverters?

12 MR. BENNETT: Objection. Form.
13 Incomplete hypothetical. Calls for
14 speculation.

15 You can answer, if you have an
16 opinion.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Let me strike the question and
19 ask a better question.

20 A. Okay.

21 Q. That question wasn't so
22 artfully crafted, Mr. Mapes.

23 Are you aware of any situation
24 during your tenure at DEA where state and
25 local law enforcement shared information with

1 a registrant related to an investigation that
2 state and local law enforcement was doing of
3 a suspected diverter?

4 MR. BENNETT: Objection.

5 Scope.

6 You can answer that question
7 yes or no only.

8 THE WITNESS: Yes.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. Would you agree that DEA
11 can obtain information from state medical
12 boards regarding investigations that the
13 state medical board is conducting?

14 MR. BENNETT: You can answer
15 that question.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Okay. Are you aware of any
19 situation where a state medical board
20 provided information to a non-law enforcement
21 registrant related to investigation --
22 pending investigations that the state medical
23 board was conducting?

24 MR. BENNETT: You can answer
25 that question yes or no only.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Okay. Are you aware of any
4 situation where Mr. Rannazzisi ever
5 authorized you or anyone else at DEA to
6 disclose to a registrant who could help DEA
7 advance its diversion investigation with
8 information that DEA had obtained from state
9 and local law enforcement?

10 MR. BENNETT: Objection.

11 Scope. Vague.

12 You can answer that question
13 yes or no.

14 THE WITNESS: No.

15 QUESTIONS BY MR. STEPHENS:

16 Q. Are you aware of any situation
17 where Mr. Rannazzisi ever authorized you or
18 anyone else at DEA to disclose to a
19 registrant who could help DEA advance its
20 diversion investigation with information that
21 DEA had obtained from a state medical board?

22 MR. BENNETT: Objection.

23 Scope. Vague.

24 You can answer that question
25 yes or no only.

1 THE WITNESS: No.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Are you aware of anyone who was
4 in the position of running the Office of
5 Diversion Control who ever authorized you or
6 anyone else at DEA to disclose to a
7 registrant who could help DEA advance its
8 diversion investigation with information that
9 DEA had obtained from a state medical board?

10 MR. BENNETT: Objection.

11 Scope. Vague.

12 You can answer that question
13 yes or no only.

14 THE WITNESS: No.

15 QUESTIONS BY MR. STEPHENS:

16 Q. Are you aware of anyone who was
17 in the position of running the Office of
18 Diversion Control who had ever authorized you
19 or anyone else at DEA to disclose to a
20 registrant who could help DEA advance its
21 diversion investigation with information the
22 DEA had obtained from state or local law
23 enforcement?

24 MR. BENNETT: Objection.

25 Scope. Vague.

1 You can answer that question
2 yes or no only.

3 THE WITNESS: No.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Did private sector companies
6 such as Walmart or Walgreens or Rite Aid have
7 the ability to access NADDIS information?

8 MR. BENNETT: You can answer
9 that question, if you know.

10 THE WITNESS: No.

11 QUESTIONS BY MR. STEPHENS:

12 Q. Did private sector companies,
13 Walmart, Walgreens, CVS, have the ability to
14 access DEA 6 reporting from DEA's databases?

15 MR. BENNETT: You can answer
16 the question.

17 THE WITNESS: Only through FOI
18 requests or discovery from a case or
19 something like that.

20 QUESTIONS BY MR. STEPHENS:

21 Q. Okay. But DEA will not provide
22 responses, if you know, to FOIA requests
23 related to pending investigations?

24 MR. BENNETT: Objection.

25 Scope. Calls for speculation. Calls

1 for a legal conclusion.

2 You may answer based on your
3 personal experience and personal
4 knowledge while you were at DEA.

5 THE WITNESS: They have not
6 provided that that I'm aware of.

7 QUESTIONS BY MR. STEPHENS:

8 Q. Okay. So information from
9 NADDIS would be a seventh example where DEA
10 agents can use that information, but private
11 sector companies cannot obtain that
12 information related to pending investigations
13 where the registrant might be able to help
14 DEA with its diversion investigation?

15 MR. BENNETT: Objection.

16 Vague. Form.

17 You can answer.

18 THE WITNESS: That's correct.

19 QUESTIONS BY MR. STEPHENS:

20 Q. Okay. So let's talk about
21 ARCOS here briefly.

22 You testified a little bit
23 about ARCOS earlier.

24 Do you recall that?

25 A. Yes.

1 Q. Okay. Now, DEA could analyze
2 ARCOS information from all registrants to
3 develop leads on potential diverters during
4 your tenure at DEA; is that fair?

5 MR. BENNETT: You can answer
6 it.

7 THE WITNESS: Yes, it is.

8 QUESTIONS BY MR. STEPHENS:

9 Q. Okay. And was that information
10 helpful in advancing DEA diversion
11 investigations?

12 MR. BENNETT: Objection.
13 Vague.

14 You can answer.

15 THE WITNESS: Yes, it was.

16 QUESTIONS BY MR. STEPHENS:

17 Q. Okay. During your tenure at
18 DEA, did DEA share ARCOS information it
19 received from one distributor with all other
20 distributors?

21 MR. BENNETT: You can answer
22 that question.

23 THE WITNESS: No.

24 QUESTIONS BY MR. STEPHENS:

25 Q. So did Mr. Rannazzisi, when he

1 ran the Office of Diversion Control, ever
2 authorize you or anyone else, to your
3 knowledge, at DEA to disclose to a registrant
4 who could help advance DEA's investigation of
5 a suspected diverter with information from
6 ARCOS that related to information that had
7 been supplied to DEA from other registrants?

8 MR. BENNETT: Objection.

9 Scope. Vague. Form.

10 You can answer that question
11 yes or no only.

12 THE WITNESS: No.

13 QUESTIONS BY MR. STEPHENS:

14 Q. To your knowledge, did anyone
15 who ran the Office of Diversion Control at
16 DEA during your tenure there ever authorize
17 you or anyone else at DEA to disclose to a
18 registrant who could help advance DEA's
19 investigation of a suspected diverter with
20 information from ARCOS that related to
21 information that had been supplied to DEA
22 from other registrants?

23 MR. BENNETT: Objection. Form.

24 Scope. Vague.

25 You can answer that question

1 yes or no only.

2 THE WITNESS: No.

3 QUESTIONS BY MR. STEPHENS:

4 Q. Okay. Move on to my next
5 topic.

6 You testified a little bit
7 earlier about your background and how you had
8 worked in field divisions and then had gone
9 to headquarters, right?

10 A. Yes.

11 Q. And you also provided some
12 information about how DEA is structured and
13 how certain squads have DEA enforcement
14 agents and other squads have DEA diversion
15 investigators.

16 Do you recall that testimony?

17 A. Yes.

18 MR. BENNETT: Objection.

19 Mischaracterizes testimony.

20 MR. STEPHENS: I don't think
21 so, but...

22 QUESTIONS BY MR. STEPHENS:

23 Q. You also -- during your tenure
24 at DEA, when you were retiring, is it fair
25 that there were about 20 field divisions or

1 so throughout the country at DEA?

2 MR. BENNETT: You can answer.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. STEPHENS:

5 Q. And each division is run by a
6 special agent in charge?

7 A. It is.

8 Q. And the special agent in charge
9 is known as the SAC, the S-A-C?

10 A. Yes.

11 Q. Okay. And that's the highest
12 level at a field division, right?

13 A. Yes.

14 Q. Okay. And there are a couple
15 other high-level positions, one of which
16 would be the assistant special agent in
17 charge, the ASAC; is that fair?

18 A. Fair.

19 Q. And another high-level position
20 in the field is what they call a RAC, a
21 resident agent in charge, fair?

22 A. Yes.

23 Q. Okay. Now, based on your
24 experience at DEA, how many of -- how many
25 SACs can you identify that came up through

1 the ranks as a diversion investigator?

2 A. None.

3 Q. Zero?

4 A. Yeah.

5 Q. Okay. Based on your career,
6 how many ASACs can you identify that came up
7 through the ranks as a diversion investigator
8 as opposed to a special agent on the
9 enforcement side?

10 A. An ASAC position is a special
11 agent position, the equivalent in diversion
12 is the diversion program manager.

13 Q. Okay. So can you identify any
14 ASAC who came up through the ranks as a
15 diversion investigator during your 30 years
16 at DEA?

17 A. There were a couple who were
18 diversion investigators and then went to
19 become special agents and ended up being
20 ASACs, but they were -- they were agents at
21 that point.

22 Q. Okay. So there were two that
23 you can recall?

24 A. A couple I can recall, yes.

25 Q. Okay. All right. Now,

1 enforcement agents are special agents, right?

2 That's how they're referred to within DEA?

3 A. Yes.

4 Q. And the enforcement agents
5 investigate drug trafficking organizations
6 like the Medellin cartel or the Sinaloa
7 cartel, fair?

8 A. Among their own duties, yes.

9 Q. Okay. Diversion investigators,
10 by contrast, focus on diversion
11 investigations; is that fair?

12 A. Yes.

13 Q. Now, at DEA, special agents can
14 also work diversion investigations, right?

15 A. Yes.

16 Q. There is no rule, there's no
17 law, there's no regulation that says
18 enforcement agents are prohibited from
19 helping diversion investigators work
20 diversion investigations; is that fair?

21 A. That's correct.

22 Q. Do you think that diversion
23 would have been further reduced during your
24 time at DEA if the special agents in charge
25 at the field division level would have made

1 diversion investigations more of a priority?

2 MR. BENNETT: Objection.

3 Scope. Incomplete hypothetical.

4 Calls for speculation.

5 This is not a 30(b)(6) witness,
6 so you are not authorized to answer on
7 behalf of DEA.

8 To the extent that you have a
9 personal opinion in your personal
10 capacity, you may answer the question.

11 THE WITNESS: No, I really
12 don't know if that would have made a
13 difference or not.

14 QUESTIONS BY MR. STEPHENS:

15 Q. Okay. Well, for example, would
16 you expect that supervisors in the field
17 divisions like SACs, ASACs and RACs should be
18 familiar with suspicious activity reports?

19 MR. BENNETT: Objection.

20 Scope. Incomplete hypothetical.

21 Calls for speculation.

22 This is not a 30(b)(6) witness
23 who can speak on behalf of the DEA.

24 To the extent that you have a
25 personal opinion, you may answer in

1 your personal capacity.

2 THE WITNESS: I don't believe
3 the SACs and ASACs would be involved
4 in something at that level and that
5 detail.

6 QUESTIONS BY MR. STEPHENS:

7 Q. Okay. How about US Attorney's
8 Offices, during your 30 years at DEA, do you
9 think that the US Attorney's Offices devoted
10 the level of resources that you wanted to
11 diversion cases as opposed to enforcement
12 cases against drug trafficking organizations?

13 MR. BENNETT: Objection.

14 Scope. Incomplete hypothetical.

15 Calls for speculation.

16 This is not a 30(b)(6) witness
17 who can answer on behalf of DEA or
18 give DEA's position.

19 To the extent that you have a
20 personal opinion, you may give your
21 opinion in your personal capacity.

22 THE WITNESS: Personally, we
23 always had good support from the
24 US Attorney's Offices.

25

1 QUESTIONS BY MR. STEPHENS:

2 Q. Can you name any chief of
3 narcotics for any of the 94 US Attorney's
4 Offices during your tenure at DEA, based on
5 your experience, who prosecuted more
6 diversion investigations than enforcement
7 matters against drug trafficking
8 organizations?

9 MR. BENNETT: Objection. Form.
10 Scope.

11 You can answer.

12 THE WITNESS: I don't know how
13 many enforcement cases they did versus
14 diversion cases, so I really don't
15 know.

16 QUESTIONS BY MR. STEPHENS:

17 Q. Can you name any OCDETF chief,
18 who ran any of the nine OCDETF regions in the
19 United States and the Caribbean during your
20 tenure at DEA, whose OCDETF team prosecuted
21 more diversion investigations compared
22 against enforcement cases brought by special
23 agents against drug trafficking
24 organizations?

25 MR. BENNETT: Objection. Form.

1 Scope.

2 You can answer.

3 THE WITNESS: Again, I don't
4 know the total of the numbers of
5 cases, so I couldn't say.

6 QUESTIONS BY MR. STEPHENS:

7 Q. Okay. Would you agree that
8 within DEA, both diversion investigators and
9 enforcement special agents are investigators
10 within DEA?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. STEPHENS:

15 Q. Okay. Based on your 30 years
16 of experience and what you wanted to
17 accomplish in anti-diversion efforts, what
18 percentage of mix between how many -- what
19 percent of enforcement special agents that
20 were allocated at DEA against what percentage
21 of diversion investigators there were at DEA
22 was the right mix?

23 MR. BENNETT: Objection. Form.
24 Objection. Scope. Objection. Calls
25 for speculation.

1 QUESTIONS BY MR. STEPHENS:

2 Q. Let me re -- fair enough,

3 Counsel. Let me restate it.

4 So during your tenure, 30-year

5 tenure, at DEA working diversion

6 investigations, for DEA to be as effective as

7 possible in its anti-diversion efforts, what

8 percentage of authorized investigator slots

9 should have been allocated to diversion

10 investigators as opposed to special agents?

11 MR. BENNETT: Objection. Form.

12 Objection. Scope.

13 To the extent that you have a

14 personal opinion, you may give it in

15 your personal capacity.

16 But you are not a 30(b)(6)

17 witness, and you are not authorized to

18 speak on behalf of DEA's allocation of

19 resources.

20 THE WITNESS: And I really

21 don't know what that -- allocation

22 would be best.

23 QUESTIONS BY MR. STEPHENS:

24 Q. During your tenure at DEA, did

25 you think that there should have been more

1 diversion investigators in the mix working
2 diversion investigations as opposed to
3 enforcement special agents focused on drug
4 trafficking organizations?

5 MR. BENNETT: Objection.

6 Scope.

7 You can answer in your personal
8 capacity if you have a personal
9 opinion, but you may not speak on
10 behalf of DEA.

11 THE WITNESS: My opinion is no,
12 because we usually had agents to work
13 on the cases with us when necessary.

14 QUESTIONS BY MR. STEPHENS:

15 Q. What percentage of time do you
16 think enforcement special agents, during your
17 tenure at DEA, spent working on diversion
18 matters as opposed to enforcement matters
19 against drug trafficking organizations?

20 MR. BENNETT: Objection.

21 Foundation. Calls for speculation.

22 You can answer, if you know.

23 THE WITNESS: I really don't
24 know what percentage. A small
25 percentage.

1 MR. STEPHENS: Okay. Let me
2 take a quick break and see if we are
3 done for the night.

4 VIDEOGRAPHER: We're going off
5 record. The time is 5:47.

6 (Off the record at 5:47 p.m.)

7 VIDEOGRAPHER: Going back on
8 record. Beginning of Media File 11.
9 The time is 5:48.

10 QUESTIONS BY MR. STEPHENS:

11 Q. Mr. Mapes, thank you. I just
12 have a few more questions for you before we
13 wrap up for the evening.

14 I had asked you some questions
15 earlier on about who you recall meeting with
16 between 2005 and 2007 in those 12 or so
17 distributor briefings that you gave.

18 Do you recall that testimony?

19 A. Yes.

20 Q. Okay. Let me ask a couple of
21 follow-up questions.

22 Did you meet with CVS in a
23 Distributor Initiative meeting between 2005
24 and 2007?

25 A. No.

1 Q. Did you meet with Rite Aid?

2 A. No.

3 Q. Did you meet with Walgreens?

4 A. No.

5 MR. STEPHENS: Okay. Thank
6 you. I have no further questions.

7 I would like to state for the
8 record that we're reserving our full
9 90 minutes for any potential redirect.

10 And with that, I'm done. Thank
11 you.

12 MR. BENNETT: Okay.

13 MS. LEVY: This is Jennifer
14 Levy for the manufacturing defendants.
15 We will decline to ask questions today
16 and reserve any questions we may have
17 until the 90-minute redirect we may do
18 tomorrow.

19 VIDEOGRAPHER: All right. This
20 concludes the deposition for today.
21 Going off the record. The time is
22 5:50.

23 (Off the record at 5:50 p.m.)

24 - - - - -


25

CERTIFICATE

I, CARRIE A. CAMPBELL, Registered
Diplomate Reporter, Certified Realtime
Reporter and Certified Shorthand Reporter, do
hereby certify that prior to the commencement
of the examination, Michael Mapes, was duly
sworn by me to testify to the truth, the
whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the
foregoing is a verbatim transcript of the
testimony as taken stenographically by and
before me at the time, place and on the date
hereinbefore set forth, to the best of my
ability.

I DO FURTHER CERTIFY that I am
neither a relative nor employee nor attorney
nor counsel of any of the parties to this
action, and that I am neither a relative nor
employee of such attorney or counsel, and
that I am not financially interested in the
action.


CARRIE A. CAMPBELL,
NCRA Registered Diplomate Reporter
Certified Realtime Reporter
Notary Public
Dated: July 11, 2019

1 INSTRUCTIONS TO WITNESS

2
3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the
6 appropriate space on the errata sheet for any
7 corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it. You are signing
10 same subject to the changes you have noted on
11 the errata sheet, which will be attached to
12 your deposition.

13 It is imperative that you return
14 the original errata sheet to the deposing
15 attorney within thirty (30) days of receipt
16 of the deposition transcript by you. If you
17 fail to do so, the deposition transcript may
18 be deemed to be accurate and may be used in
19 court.

ACKNOWLEDGMENT OF DEPONENT

I, _____, do
hereby certify that I have read the foregoing
pages and that the same is a correct
transcription of the answers given by me to
the questions therein propounded, except for
the corrections or changes in form or
substance, if any, noted in the attached
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Michael Mapes

DATE

Subscribed and sworn to before me this
_____ day of _____, 20 _____.

My commission expires: _____

Notary Public

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1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO ALL CASES) Polster
12)

13 FRIDAY, JULY 12, 2019

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
15 CONFIDENTIALITY REVIEW
16 VOLUME II

17 - - -

18 Videotaped deposition of Michael
19 Mapes, held at the offices of The Mining
20 Exchange, A Wyndham Grand Hotel & Spa, 8
21 South Nevada Avenue, Colorado Springs,
22 Colorado, commencing at 8:01 a.m., on the
23 above date, before Carrie A. Campbell,
24 Registered Diplomate Reporter and Certified
25 Realtime Reporter.

- - -

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1 VIDEOGRAPHER: We are now on
2 the record. My name is Dan Lawlor.
3 I'm the videographer with Golkow
4 Litigation Services.

5 Today's date is July 12, 2019.
6 The time is 8:01 a.m.

7 This video deposition is being
8 held in Colorado Springs, Colorado, in
9 the matter of National Prescription
10 Opiate Litigation, MDL Number 2804.

11 This is the continuing
12 deposition of Michael Mapes. The
13 court reporter is Carrie Campbell.

14 And, Mr. Mapes, I remind you
15 that you're still under oath from
16 yesterday, and please proceed.

17 EXAMINATION

18 QUESTIONS BY MR. LANIER:

19 Q. Sir, you are Mr. Mapes?

20 A. Yes.

21 Q. You gave a deposition yesterday
22 with a bunch of lawyers for the opioid
23 companies asking you questions, right?

24 MS. MCCLURE: Form.

25 THE WITNESS: Right.

1 QUESTIONS BY MR. LANIER:

2 Q. You had the distributors asking
3 you questions; you had some of the pharmacies
4 asking you questions, correct?

5 A. Yes.

6 Q. Through their lawyers?

7 A. Right.

8 Q. Okay. You understand I
9 represent the plaintiffs in this case, the
10 counties, the folks that have brought the
11 lawsuit.

12 You understand that?

13 A. Yes.

14 Q. All right. One of the things I
15 found interesting yesterday is one of the
16 lawyers, I believe it was the young lady for
17 the AmerisourceBergen group company -- let's
18 find where we've got -- there it is -- made a
19 big point of saying to you on the record for
20 the jury "we've never met before."

21 MS. MCCLURE: Form.

22 QUESTIONS BY MR. LANIER:

23 Q. Do you remember that?

24 A. Yes.

25 Q. And you, "Oh, no, I've never

1 met you."

2 Remember?

3 A. Well, not those exact words,
4 but that -- yes.

5 Q. And y'all went on and on about
6 two meetings that you had with plaintiffs'
7 lawyers, oh, a year or so ago where you never
8 even could remember the names of the lawyers
9 there or the faces, right?

10 MS. MCCLURE: Objection.

11 MR. EPPICH: Objection.

12 Misstates testimony.

13 THE WITNESS: Correct, I didn't
14 remember the names of the attorneys
15 that were there.

16 QUESTIONS BY MR LANIER:

17 Q. Right.

18 And remember they were -- you
19 were asked over and over, could it be any
20 lawyers in this room? You know, we're in a
21 room with, what, more lawyers than people --
22 I mean, you've got 20-plus lawyers in this
23 room, don't you?

24 MS. MCCLURE: Objection to
25 form. Compound. Misstates the

1 record.

2 MR. EPPICH: Objection.

3 Characterization.

4 QUESTIONS BY MR. LANIER:

5 Q. I mean, just listen to how many
6 of them are objecting.

7 You've got a bunch of them in
8 here, don't you?

9 A. Yes.

10 Q. And not one lawyer do you
11 recognize from that meeting?

12 A. That's correct.

13 Q. And not one name do you
14 remember from that meeting?

15 MS. MCCLURE: Form.

16 THE WITNESS: I remember a
17 couple of names at the meeting now,
18 but I didn't remember those yesterday.

19 QUESTIONS BY MR. LANIER:

20 Q. Did you go back and look at
21 some notes or something?

22 A. Yes, I looked at my calendar.

23 Q. Oh, okay.

24 What were the names that you
25 went back and did homework on overnight?

1 A. I saw one was Richard Fields.

2 Q. I've never heard of him.

3 Who is he?

4 A. He's an attorney representing
5 some plaintiffs.

6 Q. Who?

7 A. I'm not sure.

8 Q. Me either.

9 Who else?

10 A. See, I don't remember the name
11 of the other one.

12 Q. Okay. But you understand
13 you're here to tell the truth?

14 A. Yes.

15 Q. And you understand that's to be
16 the whole truth?

17 A. Yes.

18 Q. And you're not supposed to
19 shade things or make things look one way just
20 because of relationships or things like that,
21 right?

22 A. Correct.

23 Q. And what struck me as odd is in
24 all of the talk that the Amerisource lawyer
25 did with you and the other lawyers, and we've

1 never met before, blah-blah-blah, you never
2 told the jury you sure had met her client,
3 AmerisourceBergen, on many times, hadn't you?

4 MS. MCCLURE: Objection to
5 form. Misstates the witness'
6 testimony. Mischaracterizes the
7 record.

8 THE WITNESS: Yeah, I did
9 mention, I'm not sure it was to her,
10 that I did consulting for
11 AmerisourceBergen.

12 QUESTIONS BY MR. LANIER:

13 Q. Yeah, but by "did consulting,"
14 that's one thing.

15 But in terms of having meetings
16 and all the rest of this stuff, you met with
17 AmerisourceBergen a whole lot, didn't you?

18 MS. MCCLURE: Form.

19 THE WITNESS: With anyone from
20 the company or --

21 QUESTIONS BY MR. LANIER:

22 Q. Yes, sir.

23 A. And are we talking about during
24 my time at DEA or post-DEA?

25 Q. I'm talking about post-DEA.

1 A. Yes, because I was working with
2 them, consulting with them.

3 Q. Well, you weren't just working
4 with them, consulting with them. You
5 understand they've got you on their
6 organizational charts?

7 A. Okay.

8 Q. You understand that they had
9 you doing confidential work for them that
10 they don't want anybody to know about?

11 MS. MCCLURE: Objection to
12 form.

13 THE WITNESS: Looking at things
14 for them, yes.

15 QUESTIONS BY MR. LANIER:

16 Q. So you met AmerisourceBergen,
17 her client, the lawyer's client, even though
18 the lawyer made a big show out of the fact
19 she'd personally not met you, true?

20 MS. MCCLURE: Form.

21 THE WITNESS: Yes, I've met
22 with AmerisourceBergen.

23 QUESTIONS BY MR. LANIER:

24 Q. And you do privileged work for
25 AmerisourceBergen, don't you, confidential

1 work?

2 A. I did.

3 Q. I mean, we've got -- do you
4 know what a privilege log is?

5 A. Yes.

6 Q. A privilege log is where
7 lawyers don't want to give up documents in
8 litigation --

9 MS. MCCLURE: Objection to
10 form.

11 QUESTIONS BY MR. LANIER:

12 Q. -- so instead of --

13 MR. LANIER: Can I get the
14 question finished, please?

15 MS. MCCLURE: I thought you
16 were finished.

17 MR. LANIER: Oh, no, there
18 wasn't a question there.

19 QUESTIONS BY MR. LANIER:

20 Q. A privilege log is when lawyers
21 don't want to give up documents during
22 litigation because they believe that they're
23 privileged for some reason, and so they --

24 MS. MCCLURE: Objection to the
25 narrative.

1 MR. LANIER: Can I finish
2 before you object, please? Otherwise
3 it makes it really hard to cut a video
4 to play.

5 Special Master, I'd ask that I
6 be allowed to finish my question
7 before the objection.

8 MS. MCCLURE: Special Master,
9 it wasn't a question. I --

10 SPECIAL MASTER COHEN: Will you
11 just wait for the objection to be
12 posed until the question is asked.
13 You'll still have time to lodge it.

14 QUESTIONS BY MR. LANIER:

15 Q. You understand that lawyers on
16 behalf of their clients will produce
17 privilege logs when they believe that there
18 are documents that they do not want to hand
19 out because those documents have a privilege
20 or some reason that they may have.

21 Do you understand about that?

22 MS. MCCLURE: Objection to
23 form.

24 THE WITNESS: Yes.

25 (Mapes Exhibit 20 marked for

1 identification.)

2 QUESTIONS BY MR. LANIER:

3 Q. I'm going to hand you a
4 document we're going to mark as Exhibit
5 Number 20. And this is just one sample, but
6 you'll look at this, and this is a privilege
7 log by ABDC.

8 Do you know what that
9 abbreviation stands for?

10 MR. BENNETT: Counsel, do you
11 have a copy for me?

12 MR. LANIER: Yes.

13 QUESTIONS BY MR. LANIER:

14 Q. Do you know what that
15 abbreviation stands for?

16 A. Yes, I do.

17 Q. What does that stand for?

18 A. AmerisourceBergen Drug Company.

19 Q. That's the client of the young
20 lady that was asking you the questions saying
21 over and over "we've never met before,"
22 right?

23 MS. MCCLURE: Objection to
24 form.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. LANIER:

2 Q. And so that company produces
3 this privilege log, and they've got a
4 document down here, just one example, but
5 it's the first privileged document on the log
6 that dates from December of 2009, Michael
7 Mapes being the author of the document.

8 Do you see that?

9 A. I do.

10 Q. And it's evidently under the
11 description a report that you prepared --
12 thank you.

13 It is a report you prepared at
14 the direction of a lawyer, not the head
15 lawyer, just a vice president and associate
16 general counsel.

17 Do you see that?

18 A. I do.

19 Q. Providing information to assist
20 with rendering of legal advice on their order
21 monitoring program review.

22 Do you see that?

23 A. I do.

24 Q. So when I say you did
25 privileged work for them, even though the

1 lawyer had you tell the jury that you'd never
2 met her before, the truth of the matter is
3 you've been working with their lawyers,
4 haven't you?

5 MS. MCCLURE: Form.

6 THE WITNESS: Yes.

7 QUESTIONS BY MR. LANIER:

8 Q. So you may not have met that
9 lawyer for AmerisourceBergen, but you were
10 working for other lawyers, weren't you?

11 A. Yes.

12 Q. And that's all part of what you
13 did with the company as their man helping
14 them with the diversion control program,
15 right?

16 MS. MCCLURE: Form.

17 THE WITNESS: That's correct.

18 QUESTIONS BY MR. LANIER:

19 Q. Well, we'll get into that in a
20 little bit, but I want to start out with a
21 roadmap and show you what I plan on asking
22 you today.

23 Okay?

24 A. Okay.

25 Q. I call your roadmap -- that's

1 you, right there, Michael Mapes, right?

2 A. Yes.

3 Q. Tried to get a good picture.

4 You okay with that picture?

5 A. It is what it is.

6 Q. Oh, it's not bad.

7 How old do you think that

8 picture is?

9 A. Three years maybe.

10 Q. Okay. You shaved for that

11 picture. You didn't shave for the jury

12 today, did you?

13 A. I did not.

14 Q. That's all right.

15 U-turn road.

16 Your career has taken a lot of

17 twists and turns, hasn't it?

18 MS. MCCLURE: Form.

19 THE WITNESS: In what regard?

20 QUESTIONS BY MR. LANIER:

21 Q. Well, I mean, you're all over

22 the map. You've done work for the

23 government. You've done work for industry,

24 lots of different parts of industry. You've

25 got companies that you've kind of helped

1 start and help get off the ground. You've
2 got -- you claim expertise in a lot of
3 different areas, right?

4 MS. MCCLURE: Form. Compound.
5 Characterization.

6 THE WITNESS: I have experience
7 in a lot of areas, yes.

8 QUESTIONS BY MR. LANIER:

9 Q. And so here's what I'd like to
10 do. I'd like to look at this road, and I'd
11 like to consider your personal background
12 first. We'll make a stop there.

13 Then we're going to make a stop
14 at your time with the DEA, and then we're
15 going to make a stop at your time doing work
16 for industry.

17 And let's see if maybe your
18 testimony kind of rotates around based upon
19 where you are and who you're working for.

20 Okay?

21 A. Okay.

22 MR. BENNETT: Objection.

23 QUESTIONS BY MR. LANIER:

24 Q. Now, in that regard, the first
25 stop we're going to make is personal

1 background. And I'm going to keep a sheet of
2 your personal background, and we're going to
3 mark these documents that I'm showing to the
4 jury as an exhibit so that both sides have
5 them and we've got the benefit of them as a
6 demonstrative exhibit for the jury.

7 Your personal background, you
8 gave us a lot of it yesterday, but what I'd
9 like to do is sort of go in and look at you
10 from another angle.

11 Are you familiar with the
12 concern that has been expressed about a
13 revolving door between government and
14 industry?

15 A. Yes.

16 Q. And a revolving door -- you
17 know, most doors are just a door that's, you
18 know, this, with a doorknob. But a revolving
19 door is one of those doors that tends to
20 revolve around, such that you've got an
21 ability to go in one way and out the other.

22 Do you follow me?

23 A. Yes.

24 Q. And the concern has been one
25 because there seem to be people who work for

1 the DEA and spend their time making
2 connections, learning the ins and outs,
3 learning the niceties of how things work, but
4 then they'll retire or take their pension
5 from the DEA and go to work for industry, the
6 very companies that they were supposed to be
7 looking over, right?

8 MS. MCCLURE: Form.

9 MR. EPPICH: Objection.

10 Argumentative.

11 THE WITNESS: And could you
12 restate the question again?

13 QUESTIONS BY MR. LANIER:

14 Q. Sure.

15 The reason the revolving door
16 is a concern is because there seems to be a
17 pattern of folks working for the DEA who then
18 go to work for the very industries they were
19 supposed to be overseeing, correct?

20 MS. MCCLURE: Form.

21 Argumentative.

22 THE WITNESS: Yes, I went to
23 work with the industries after
24 retiring from DEA.

25

1 QUESTIONS BY MR. LANIER:

2 Q. Yeah. You worked at DEA, and
3 they have a mandatory retirement, don't they?

4 MS. MCCLURE: Form.

5 THE WITNESS: Not in the
6 diversion control program.

7 QUESTIONS BY MR. LANIER:

8 Q. So you did not have a mandatory
9 retirement; you could have kept working
10 there?

11 A. Yes.

12 Q. But you chose to retire?

13 A. Yes, I did.

14 Q. You chose to retire at what
15 age, 65? 70?

16 A. 55.

17 Q. Oh, you retired at 55.

18 Did you get a pension?

19 A. Yes.

20 Q. What percentage of your pay was
21 your pension?

22 A. I don't really recall.

23 Q. How much were you making a year
24 when you retired?

25 A. I'm not certain of that number.

1 Q. Well, you got to have a general
2 idea. I mean, you're remembering
3 conversations yesterday that happened
4 12 years ago, 14 years ago. Surely you've
5 got a general idea how much money you used to
6 make.

7 MS. MCCLURE: Form.
8 Argumentative.

9 THE WITNESS: Generally 120,
10 125,000.

11 QUESTIONS BY MR. LANIER:

12 Q. All right. So making something
13 in the range -- I'll do that squiggle mark --
14 of 120 to 125,000 per year.

15 Now, when you retired -- that
16 had been your salary. When you retired, you
17 got a percentage of that as your retirement
18 pay, correct?

19 A. That's correct.

20 Q. And you don't know even roughly
21 what percentage?

22 MS. MCCLURE: Form. Asked and
23 answered.

24 THE WITNESS: Roughly 55 or
25 60 percent.

1 QUESTIONS BY MR. LANIER:

2 Q. All right. So you would get
3 roughly -- and that's still today, I assume,
4 right?

5 A. Yes.

6 MS. SWIFT: We've got the
7 realtime --

8 MR. LANIER: Y'all want to go
9 off the record? Okay.

10 VIDEOGRAPHER: We're going off
11 record. The time is 8:17.

12 (Off the record at 8:17 a.m.)

13 VIDEOGRAPHER: We're going back
14 on record. Beginning of Media File 2.
15 The time is 8:21.

16 QUESTIONS BY MR. LANIER:

17 Q. Before the technical glitch,
18 you and I had made clear that you were
19 drawing about half of your salary now that
20 you're in retirement, maybe a little more,
21 maybe 60 percent, so somewhere around \$75,000
22 a year?

23 A. That's correct.

24 Q. But while you retired from the
25 DEA, so the jury's clear, you just started

1 going to work for industry, didn't you?

2 MS. MCCLURE: Form.

3 THE WITNESS: Yes, I did work
4 for industry.

5 QUESTIONS BY MR. LANIER:

6 Q. In fact, there's an expression
7 that y'all use; you were hired up --

8 MS. MCCLURE: Form.

9 QUESTIONS BY MR. LANIER:

10 Q. -- by industry, weren't you?

11 MS. MCCLURE: Foundation.

12 THE WITNESS: I haven't heard
13 that expression.

14 QUESTIONS BY MR LANIER:

15 Q. You've never heard the
16 expression "hired up"?

17 A. No, I haven't.

18 Q. Okay.

19 MS. MCCLURE: Mr. Lanier,
20 consistent with the practice during
21 the Rannazzisi deposition, I do note
22 that you are writing information on
23 the sheet of paper you have in front
24 of me in advance of asking the witness
25 the question and in advance of the

1 witness confirming that yes or no he's
2 familiar with the concept of "hired
3 up."

4 So I would request, again, that
5 you refrain from writing information
6 on the sheet which suggests that it
7 is, in fact, information obtained from
8 Mr. Mapes until Mr. Mapes has, in
9 fact, provided you with that
10 information.

11 MR. LANIER: I'm allowed --
12 he's an adverse witness. I'm allowed
13 to lead him, so I'm allowed to write
14 questions that may be leading in that
15 way.

16 I'm also allowed to write any
17 note I want to in terms of "look at
18 this, please, and tell me if you agree
19 with that statement."

20 You show him a document; I show
21 him a demonstrative. Nobody, no
22 lawyer in any trial I've ever been in,
23 has to ask questions before they use a
24 demonstrative or show a demonstrative
25 to a witness, and this is no

1 different.

2 MS. MCCLURE: I continue to
3 maintain my objection.

4 MR. LANIER: Okay.

5 QUESTIONS BY MR. LANIER:

6 Q. So you've not heard that
7 expression "hired up" by industry?

8 A. No, I have not.

9 Q. All right. Let's see if we can
10 find some of where it may come from.

11 You read the New York -- I mean
12 the Washington Post ever?

13 A. I have in the past.

14 Q. Are you familiar with the
15 article "The Drug Industry's Triumph Over the
16 DEA"? I'm going to mark it as Exhibit
17 Number 21.

18 (Mapes Exhibit 21 marked for
19 identification.)

20 QUESTIONS BY MR. LANIER:

21 Q. Put it up here for the jury to
22 see.

23 Are you familiar with this
24 article, sir?

25 MS. MCCLURE: Mr. Lanier, while

1 Mr. Mapes is taking the opportunity to
2 review the document that you've put in
3 front of you him, I would also note
4 that Mr. Mapes is not an adverse
5 witness at this point. You did
6 cross-notice the deposition.

7 MR. LANIER: You will find that
8 I often notice the deposition of
9 adverse witnesses. A cross-notice is
10 not what defines him as an adverse
11 witness.

12 MS. MCCLURE: You have not
13 established adversity; nevertheless, I
14 continue to maintain my objection to
15 the extent that you write information
16 on a sheet of paper and suggest for
17 the jury that it is --

18 MR. LANIER: Timeout.

19 MS. MCCLURE: -- in fact,
20 information that Mr. Mapes has
21 provided.

22 MR. LANIER: May I suggest that
23 all objections except to form and
24 responsiveness have been reserved
25 under the rules, and that we're trying

1 to get out of this today in an
2 expedient manner and that I'm spending
3 more time talking to you on the record
4 and hearing you talk to me than I am
5 the witness. And that's no way to get
6 this done.

7 And I'm under a limited time
8 perspective of what I can do, so I'd
9 ask you to adhere to the rules or I
10 will ask the special master to
11 intervene.

12 MS. MCCLURE: I am adhering to
13 the rules, and I also note that we
14 were talking during the time Mr. Mapes
15 was taking the opportunity to review a
16 lengthy document that you have placed
17 before him.

18 QUESTIONS BY MR. LANIER:

19 Q. Sir, are you familiar with this
20 document?

21 A. I don't believe I've seen the
22 document itself before. I've heard
23 discussions about it.

24 Q. All right. You've heard
25 discussions about this article that is

1 subtitled "Amid a targeted lobbying effort,
2 Congress weakened the DEA's ability to go
3 after drug distributors even as opioid deaths
4 continue to rise, a Washington Post and
5 60 Minutes investigation finds."

6 You're at least familiar with
7 the fact this article's out there even if you
8 haven't read it, fair?

9 A. Yes.

10 Q. In fact, you were contacted by
11 60 Minutes but you chose not to speak to
12 them, true?

13 MS. MCCLURE: Objection.

14 Foundation. Leading. Form.

15 THE WITNESS: That's correct.

16 QUESTIONS BY MR. LANIER:

17 Q. Now, in this article I direct
18 your attention to what is marked in the
19 corner as page 53.15. It's a chart that I've
20 got on the overhead.

21 Do you find that chart?

22 A. Yes.

23 Q. It says, "At least 56 DEA and
24 justice officials went to work for the
25 pharmaceutical industry. Pharmaceutical

1 companies and the law firms that represent
2 them hired at least 56 former officials since
3 2000."

4 And then you got all of these
5 yellow dots that show the people.

6 Do you see that?

7 MR. STEPHENS: Object to form.

8 THE WITNESS: I do.

9 QUESTIONS BY MR. LANIER:

10 Q. You're one of these dots,
11 aren't you?

12 MR. STEPHENS: Object to form.

13 MR. EPPICH: Objection.

14 Foundation. Calls for speculation.

15 THE WITNESS: I don't know that
16 I am, because it's not -- there aren't
17 names with the majority of the dots.

18 QUESTIONS BY MR. LANIER:

19 Q. Well, let's put it this way:
20 You are someone who was a DEA official who
21 went to work for the pharmaceutical industry
22 since 2000, aren't you?

23 MS. MCCLURE: Form.

24 Foundation.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. LANIER:

2 Q. You did that in 2007 or '8?

3 A. 2008.

4 Q. So this row right here may not
5 have a dot for you, but we at least know that
6 Michael Mapes belongs in that column, fair?

7 MS. MCCLURE: Form. Leading.

8 MR. EPPICH: Object to the
9 demonstrative. Misstates the
10 testimony.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. LANIER:

13 Q. All right. Now, in this
14 regard, sir, this idea of a revolving door,
15 you being -- working governing industry and
16 then all of a sudden you going to work for
17 industry, you get paid by industry when they
18 hire you to do their work, don't you?

19 MS. MCCLURE: Form.
20 Foundation. Leading.

21 THE WITNESS: Yes.

22 QUESTIONS BY MR. LANIER:

23 Q. So in addition to the money
24 that you were getting in retirement from the
25 government, you start making money from

1 industry, fair?

2 MS. MCCLURE: Form.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. LANIER:

5 Q. And the money you've made from
6 industry, is that based always on an hourly
7 rate or was it ever on a project or as a
8 salary?

9 A. A little of both.

10 Q. All right. So tell us -- you
11 know, American taxpayers are continuing to
12 pay you your retirement benefit while
13 industry is paying you to do work for them.
14 Tell us how industry is paying you.

15 MS. SWIFT: Objection.

16 Leading.

17 MS. MCCLURE: Objection.

18 Leading. Form.

19 QUESTIONS BY MR. LANIER:

20 Q. That is a bad question. Let me
21 reask it.

22 Sir, how has industry been
23 paying you since 2008?

24 MS. MCCLURE: Form.

25 THE WITNESS: Mostly by the

1 hour.

2 QUESTIONS BY MR. LANIER:

3 Q. All right. What's your hourly
4 rate been?

5 MS. MCCLURE: Form.

6 THE WITNESS: It has changed.

7 It started at \$100 an hour, and the
8 most recent sum at \$300 an hour.

9 QUESTIONS BY MR. LANIER:

10 Q. If you were to work 40 hours a
11 week, which maybe you do more, maybe you do
12 less, but if you work 40 hours a week, full
13 time, for 50 weeks out of the year, take a
14 couple weeks vacation, that would be
15 2,000 hours a year. 2,000 hours a year, is
16 that somewhere between 200,000 and 600,000
17 per year you now make or could make doing
18 industry work in addition to your retirement
19 from DEA?

20 Did I do that right?

21 MS. MCCLURE: Form.

22 Speculation. And object to the
23 narrative and the testimony by the
24 plaintiffs' attorney. Incomplete
25 hypothetical.

1 THE WITNESS: I think you're
2 correct if I worked 40 hours a week,
3 50 weeks a year, but I don't.

4 QUESTIONS BY MR. LANIER:

5 Q. Right.

6 Are you getting paid for your
7 testimony here?

8 A. No.

9 Q. Okay. Because I know you've
10 been hired by one of the companies in this
11 case right now, haven't you?

12 MS. MCCLURE: Form. Misstates
13 the witness' testimony.

14 THE WITNESS: Yes.

15 QUESTIONS BY MR. LANIER:

16 Q. Tell the jury who's hired you,
17 who you're working for right now, that was
18 asking you questions yesterday.

19 MS. WICHT: Object to form.

20 THE WITNESS: The Williams
21 Connolly firm.

22 QUESTIONS BY MR. LANIER:

23 Q. And who do they represent, to
24 your knowledge?

25 A. Cardinal Health.

1 Q. Now, sir, we've got -- I went
2 on the Internet.

3 MR. LANIER: Do I have copies
4 of this?

5 While they're getting that, let
6 me take a step back.

7 QUESTIONS BY MR LANIER:

8 Q. You went out to these companies
9 you used to oversee. You went out to these
10 companies and you actually solicited their
11 business, didn't you?

12 MS. MCCLURE: Form.
13 Speculation. Foundation.

14 THE WITNESS: No, I didn't.

15 QUESTIONS BY MR. LANIER:

16 Q. You didn't send letters to
17 these companies saying, "Hey, I'm out of the
18 door now. I'm out of the DEA. I'm ready to
19 work for you"?

20 A. No, I did not.

21 MS. MCCLURE: Form.

22 QUESTIONS BY MR. LANIER:

23 Q. Now, see, I got, for example,
24 what looked to me like you asking Henry
25 Schein if they would like you to work for

1 them.

2 MS. MCCLURE: Form.

3 Foundation. Leading.

4 QUESTIONS BY MR. LANIER:

5 Q. Do you not remember that at
6 all?

7 A. No, I don't.

8 (Mapes Exhibit 22 marked for
9 identification.)

10 QUESTIONS BY MR. LANIER:

11 Q. I'm going to hand you a
12 document that we'll mark as Exhibit
13 Number 22.

14 There you go, sir. Exhibit
15 Number 22 looks like an e-mail from an
16 MR Mapes.

17 Is that you?

18 A. Yes, it is.

19 Q. And it is, subject, consulting
20 proposal.

21 Do you see that?

22 A. Yes.

23 Q. You sent an e-mail to this
24 Michael DiBello where you said, "Attached is
25 a proposal for due diligence consulting for

1 Henry Schein, Inc."

2 Did I read that correctly?

3 A. Yes.

4 Q. Who is Henry Schein, Inc.?

5 A. They are a -- a distributor of
6 pharmaceuticals.

7 Q. Yeah, they get opioids from the
8 people who make them and get them to the
9 people that sell them, right?

10 A. Yes.

11 Q. They are a distributor of
12 opioids, along with other drugs, I assume,
13 fair?

14 A. Yes.

15 MR. HAHN: Objection. Form.

16 QUESTIONS BY MR. LANIER:

17 Q. And you did a proposal for
18 consulting.

19 Do you see that?

20 A. Yes, I do.

21 Q. And consulting is what this
22 industry work you do is called. You call
23 this consulting work, don't you?

24 A. Yes.

25 Q. And so what you did is back in

1 2011 is you sent an e-mail out with a
2 proposal --

3 A. In re -- yes, I did, in
4 response to their request.

5 Q. They asked you to pitch your
6 services to them?

7 MS. MCCLURE: Form.

8 THE WITNESS: Yes.

9 QUESTIONS BY MR. LANIER:

10 Q. And then you pitched your
11 services to them?

12 A. Yes.

13 Q. Okay. So you only pitch your
14 services if they come to you first and say,
15 "Would you pitch your services"?

16 A. Yes.

17 Q. And then you send them these
18 elaborate proposals for consulting --

19 MR. EPPICH: Objection.

20 QUESTIONS BY MR. LANIER:

21 Q. -- where you talk about what
22 you will do to provide them consulting
23 services related to their due diligence
24 investigations of their current or potential
25 customers.

1 See that?

2 MS. MCCLURE: Form.

3 QUESTIONS BY MR. LANIER:

4 Q. You see that?

5 A. Yes, I see that.

6 Q. Now, that wasn't your first
7 correspondence with them. You actually say
8 you didn't pitch yourself to them, but I want
9 to give you another document and see if it
10 changes your mind.

11 I'll mark this one as Exhibit
12 Number 23.

13 (Mapes Exhibit 23 marked for
14 identification.)

15 QUESTIONS BY MR. LANIER:

16 Q. Do you have Exhibit Number 23
17 in front of you?

18 A. Yes.

19 Q. It's another e-mail, but it's
20 one that you sent out before this last
21 exhibit, correct?

22 The one we were just looking
23 at, Exhibit Number 22, was May the 10th. Oh,
24 oh, oh. No, this is afterwards. This is
25 May 26th, isn't it?

1 See that date?

2 A. Yes, I do.

3 Q. May 26, you're sending an
4 e-mail where you attach a draft of the letter
5 concerning their SOM program.

6 What does SOM stand for?

7 A. Suspicious order monitoring.

8 Q. That's what the government
9 requires these companies to do; they are to
10 monitor suspicious orders for drugs, right?

11 MR. HAHN: Objection. Form.

12 THE WITNESS: Yes.

13 QUESTIONS BY MR. LANIER:

14 Q. You said, "I have attached a
15 draft of the letter concerning that program
16 at Henry Schein. I have some background in
17 the letter about the DEA requirements, as I
18 believe I'm in a unique position to talk about
19 those requirements."

20 See that?

21 A. Yes.

22 Q. Sir, you were certainly telling
23 folks that you were the man for the job,
24 weren't you?

25 MS. MCCLURE: Form.

1 THE WITNESS: Yes.

2 (Mapes Exhibit 24 marked for
3 identification.)

4 QUESTIONS BY MR. LANIER:

5 Q. Now, I'll give you Exhibit
6 Number 24. This is a copy of your LinkedIn
7 page.

8 LinkedIn is one of these
9 Internet things where people can list their
10 information on a professional level; is that
11 right?

12 MS. MCCLURE: Form.

13 THE WITNESS: It is.

14 QUESTIONS BY MR. LANIER:

15 Q. And so we've got you, Mike
16 Mapes.

17 Did you do your own LinkedIn
18 page?

19 A. I did.

20 Q. iSAW Solutions, CEO. That
21 means you're the boss of the bosses. You are
22 the chief executive, right?

23 A. There are no other bosses, but,
24 yes, there's only two people in the company.

25 Q. You and who?

1 A. My brother.

2 Q. All right. What's your
3 brother's background and training?

4 A. He does accounting and tax
5 preparation.

6 Q. Okay. Because I was looking at
7 this, and, I mean, you hold yourself out to
8 be an expert in a lot of different areas,
9 don't you?

10 MS. MCCLURE: Form.

11 QUESTIONS BY MR. LANIER:

12 Q. You see this page, "Industry
13 Knowledge"?

14 Do you see it?

15 A. I see it.

16 Q. I mean, criminal
17 investigations? National security?
18 Litigation? Firearms?

19 MS. MCCLURE: Is there a
20 question?

21 QUESTIONS BY MR. LANIER:

22 Q. Physical security, defense --

23 MS. MCCLURE: Objection.

24 QUESTIONS BY MR. LANIER:

25 Q. -- tactics, regulatory affairs,

1 asset protection.

2 Did I read those right?

3 A. You read those -- they're on
4 the page, but those aren't things that I put
5 in.

6 Q. Do you think they just
7 automatically appear on your LinkedIn page?

8 MR. EPPICH: Objection.
9 Argumentative.

10 MS. MCCLURE: Objection.
11 Foundation.

12 THE WITNESS: I don't know
13 where they came from.

14 QUESTIONS BY MR. LANIER:

15 Q. Well, you're the one who did
16 your LinkedIn page.

17 A. Yes.

18 Q. Did you not know when you do
19 LinkedIn you have to check the areas where
20 you have expertise or industry knowledge so
21 that people know when to use you?

22 MS. MCCLURE: Form.
23 Foundation.

24 THE WITNESS: Well, I did not
25 check any of those areas.

1 QUESTIONS BY MR. LANIER:

2 Q. Do you think that they're
3 default areas that just show up on
4 everybody's LinkedIn page?

5 Because I promise you they're
6 not on mine.

7 MS. MCCLURE: Object to the
8 narrative. Form. Foundation.
9 Speculation. Argumentative.

10 THE WITNESS: No.

11 QUESTIONS BY MR. LANIER:

12 Q. I mean, you're going to consult
13 on the police? You're going to consult on --
14 well, now regulatory requirements, that's --
15 you've already shown us that, right?

16 MS. MCCLURE: Form.

17 QUESTIONS BY MR. LANIER:

18 Q. Right?

19 Regulatory requirements, that
20 one may be legit.

21 A. Yes.

22 MS. MCCLURE: Form.

23 QUESTIONS BY MR. LANIER:

24 Q. But come on, counterterrorism?

25 A. I don't know where that came

1 from.

2 Q. Huh.

3 Then there are like information
4 on the last page where you've got like
5 endorsements. Some lawyer named Daniel
6 Christopher says, "Mike" --

7 That's your first name, right?

8 A. Yes.

9 Q. -- "has the knowledge and
10 experience to solve problems and give perfect
11 outcome-oriented recommendations and
12 planning."

13 Do you see that?

14 A. I do.

15 Q. Outcome-oriented, other than
16 the fact it's not spelled right, that's what
17 these pharmaceutical companies have hired you
18 to do, give outcome-oriented recommendations.

19 You're trying to get them to
20 where they want to be, aren't you?

21 MS. MCCLURE: Objection. Form.
22 Compound. Incomplete hypothetical.
23 Foundation. Misstates the witness'
24 testimony.

25 THE WITNESS: Yes, I'm trying

1 to get them to understand the rules
2 and procedures to be in compliance.

3 QUESTIONS BY MR. LANIER:

4 Q. And that's why companies like
5 AmerisourceBergen put you into their
6 corporate charts.

7 MS. MCCLURE: Objection.

8 Leading.

9 QUESTIONS BY MR. LANIER:

10 Q. Right?

11 MS. MCCLURE: Leading.

12 Foundation.

13 THE WITNESS: I don't know why
14 they added me to their chart.

15 (Mapes Exhibit 25 marked for
16 identification.)

17 QUESTIONS BY MR. LANIER:

18 Q. Let me give you a document that
19 we'll mark as Exhibit Number 25, and it's
20 actually a set of documents that have come.

21 Gives us an idea of how the
22 company charted out the associates -- let's
23 start up here, the bold. "Associates
24 assigned to provide resources for the
25 diversion control program."

1 Do you see that?

2 MR. EPPICH: Objection.

3 Foundation.

4 THE WITNESS: Yes, I do.

5 QUESTIONS BY MR. LANIER:

6 Q. Now, understand that -- make
7 sure that we're clear on our terms here.
8 There is within the pharmaceutical world a
9 closed loop when it comes to drugs like
10 opioids. Opioids only belong within a closed
11 loop.

12 MS. MCCLURE: Objection to the
13 narrative.

14 QUESTIONS BY MR. LANIER:

15 Q. Correct?

16 A. Yeah.

17 MR. EPPICH: Objection. Form.

18 QUESTIONS BY MR. LANIER:

19 Q. And so in here you've got the
20 companies that are, I guess, importing,
21 bringing in the opium, the materials for the
22 opioids. You've got the importers.

23 You've got the companies that
24 are manufacturing the pills or the medicine,
25 whatever. You've got the manufacturers.

1 You've got the people who are
2 passing those out, the distributors.

3 And then you've got the
4 pharmacies at the end that are supposed to be
5 getting them to the sick, right?

6 MS. MCCLURE: Objection.

7 MS. SWIFT: Objection.

8 Leading.

9 MS. MCCLURE: Form.
10 Foundation. Incomplete
11 representation. Object to the
12 narrative by counsel.

13 THE WITNESS: Yes, all those
14 are registrants that would handle
15 controlled substances.

16 QUESTIONS BY MR. LANIER:

17 Q. And that's the word that you
18 were using "registrants," because they have
19 to register with the government. And if they
20 are not registered and accepted, it's illegal
21 for them to market in opioids, isn't it?

22 MS. MCCLURE: Objection. Form.

23 Leading. Foundation.

24 MS. SWIFT: Objection. Form.

25

1 QUESTIONS BY MR. LANIER:

2 Q. True?

3 A. It is illegal for them to
4 handle opioids if they're not registered,
5 yes.

6 Q. And so when we talk about
7 diversion, diversion is when these pills
8 somehow, somewhere, go outside the loop and
9 they are diverted. And instead of going to
10 properly prescribed patients, they get
11 diverted into an improper use, right?

12 MS. MCCLURE: Objection.

13 Leading. Foundation. Misstates.

14 THE WITNESS: Correct.

15 QUESTIONS BY MR. LANIER:

16 Q. Okay. So we're looking at the
17 associates that were assigned to provide
18 resources for the diversion control program,
19 the program to keep these drugs from being
20 diverted, right?

21 A. Yes.

22 Q. Because these are dangerous
23 drugs, true?

24 MS. MCCLURE: Form.

25 THE WITNESS: I don't know what

1 you mean by "dangerous."

2 QUESTIONS BY MR. LANIER:

3 Q. They can kill you?

4 MS. MCCLURE: Form.

5 QUESTIONS BY MR. LANIER:

6 Q. They can do damage to you if
7 you are taking them improperly, in an
8 improper dose at an improper time?

9 A. They could.

10 Q. They can be addictive?

11 A. Yes.

12 Q. That's dangerous to me. Is
13 that dangerous to you?

14 A. Yes.

15 Q. Okay. So we can agree these
16 are dangerous drugs?

17 A. Yes.

18 Q. All right. And so you want to
19 keep them from being diverted. And not only
20 do you want to, the distributors are required
21 by law to do a number of different things to
22 stop diversion of opioids, aren't they?

23 A. They are.

24 MS. WICHT: Object to the form.

25

1 QUESTIONS BY MR. LANIER:

2 Q. And the law they are supposed
3 to follow is what?

4 A. The Controlled Substances Act.

5 Q. And it sets out
6 responsibilities, doesn't it?

7 A. It does.

8 Q. Okay. And so here we see for
9 AmerisourceBergen in Exhibit 25 associates
10 assigned to provide resources for the
11 diversion control program, and it starts up
12 here with a vice president and an
13 administrative assistant.

14 You see all of that?

15 A. Yes.

16 Q. Look at this. Mike Mapes, DEA
17 consultant. You made their chart.

18 Did you know that?

19 MS. MCCLURE: Objection to
20 form.

21 THE WITNESS: I see that.

22 QUESTIONS BY MR. LANIER:

23 Q. And if I follow the chart
24 right, they've got you basically reporting to
25 the vice president, don't they?

1 MS. MCCLURE: Objection. Form.

2 THE WITNESS: I didn't report
3 to the vice president. It was mainly
4 with Steve Mays, the director of CSRA.

5 QUESTIONS BY MR. LANIER:

6 Q. This fellow that's lateral to
7 you on the chart?

8 A. Yes.

9 Q. So practically speaking, the
10 vice president didn't take your cares or
11 concerns. You didn't even know technically
12 you were reporting to him; is that right?

13 MS. MCCLURE: Form.

14 Foundation.

15 THE WITNESS: Practically I
16 reported to Steve Mays.

17 QUESTIONS BY MR. LANIER:

18 Q. Now, also of note here, it
19 looks like these aren't people who are just
20 fully assigned to diversion control.
21 Everyone already had a full-time job in
22 addition to doing this work; is that right?

23 MS. MCCLURE: Form.

24 Foundation. Calls for speculation.

25 THE WITNESS: I'm not aware of

1 the full-time jobs that others on the
2 chart would have.

3 QUESTIONS BY MR. LANIER:

4 Q. But do you see where it says,
5 "Everyone already has a full-time job"?

6 A. I see what that says, yes.

7 MS. MCCLURE: Objection.

8 QUESTIONS BY MR. LANIER:

9 Q. Like diversion control program,
10 that's just an afterthought. That's
11 something you do in extra time, when you got
12 a little extra time. Hey, you got a few
13 extra minutes in addition to your full-time
14 job, would you come do this critical work to
15 make sure the drugs don't get diverted?

16 MS. MCCLURE: Form. Misstates
17 the record. Foundation. Calls for
18 speculation.

19 QUESTIONS BY MR. LANIER:

20 Q. Did you know about any of that?

21 MS. MCCLURE: All of the same
22 objections.

23 THE WITNESS: No.

24 QUESTIONS BY MR. LANIER:

25 Q. And there are multiple sheets

1 to the exhibit that I've given you that are
2 just different charts that they've done over
3 the times that have you in it.

4 You worked for
5 AmerisourceBergen for a long time, didn't
6 you?

7 MS. MCCLURE: Objection.

8 Leading. Foundation.

9 Objection to the continuing
10 narrative by counsel.

11 THE WITNESS: Yes, I did.

12 QUESTIONS BY MR. LANIER:

13 Q. Okay. Now, one more thing that
14 I want to cover before we leave here is there
15 are some people you know who have been
16 designated as experts by the plaintiffs that
17 I think maybe you worked with, and I need to
18 know if you're going to say anything bad
19 about at trial.

20 You understand what I'm asking
21 you?

22 A. Yes.

23 MS. MCCLURE: Form.

24 QUESTIONS BY MR. LANIER:

25 Q. Did you work in the DEA Detroit

1 office with Jim Geldhof, who later became the
2 regional supervisor?

3 A. No.

4 Q. You did not?

5 A. We worked in the Detroit office
6 at different times.

7 Q. Okay. Do you know Jim Geldhof?

8 A. Yes.

9 Q. Good guy?

10 MS. MCCLURE: Form.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. LANIER:

13 Q. Know what he's doing?

14 A. Yes.

15 Q. Honest?

16 MS. MCCLURE: Form.

17 THE WITNESS: As far as I know.

18 QUESTIONS BY MR. LANIER:

19 Q. Reliable?

20 MS. MCCLURE: Form.

21 THE WITNESS: As far as I know.

22 QUESTIONS BY MR. LANIER:

23 Q. All right. Jim Rafalski, who
24 did the ARCOS and field analysis work, do you
25 know Jim Rafalski?

1 A. I know the name more than I
2 know the person.

3 Q. All right.

4 A. I may have met him a couple of
5 times.

6 Q. You're not able to comment on
7 him --

8 A. No.

9 Q. -- one way or the other.
10 The jury is also going to hear
11 from Joe Rannazzisi.

12 You know Joe Ran, don't you?

13 A. Yes.

14 Q. Good man?

15 MS. MCCLURE: Form.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. LANIER:

18 Q. Honest?

19 A. Yes.

20 Q. Reliable?

21 A. Yes.

22 Q. Okay. We are through the first
23 stop on your roadmap, personal background.

24 Next stop, DEA.

25 The DEA stop is going to take

1 about an hour or so. We've been going
2 54 minutes.

3 Are you good to keep going?

4 A. Yes.

5 Q. Okay.

6 MS. LEVY: While we're in
7 transition, can we ask the court reporter if
8 she can refresh the realtime?

9 MR. LANIER: Let's go off the
10 record for you to refresh the
11 realtime, and I'm going to run down
12 the hall to use the restroom.

13 (Off the record at 8:55 a.m.)

14 VIDEOGRAPHER: We're going back
15 on record. Beginning of Media File 3.
16 The time is 9:03.

17 QUESTIONS BY MR. LANIER:

18 Q. Mr. Mapes, we have finished
19 that first stop on my roadmap of your
20 personal background.

21 You with me?

22 A. Yes.

23 Q. And now I want to ask you about
24 questions and subjects that were asked of you
25 yesterday by the lawyers for the various

1 companies.

2 Okay?

3 A. Yes.

4 Q. And I've divided them up into
5 two different areas: those matters that
6 arose while you were working for the DEA, and
7 those matters that arose generally while
8 you've been doing industry work.

9 Okay?

10 A. Okay.

11 Q. And so our first stop are the
12 matters while you were working with the DEA.

13 A. Okay.

14 Q. Now, in this regard, we'll
15 focus in on the DEA time. We'll keep a
16 little running list of notes for this stop,
17 but in general you covered a number of
18 different subjects that came up yesterday,
19 and I kind of want to isolate each one and
20 talk about them.

21 Okay?

22 A. Okay.

23 Q. So one subject that you talked
24 about a lot was Internet pharmacy issues.

25 Correct?

1 A. Yes.

2 Q. And so these are pharmacies
3 that exist somehow on the worldwide web more
4 than they do, you know, in a building down
5 the street.

6 MS. MCCLURE: Form.

7 MR. LANIER: That's supposed to
8 be a keyboard and a monitor. I'm not
9 very good at this, am I?

10 MS. MCCLURE: Objection. Form.
11 Narrative.

12 MR. LANIER: Bad art.

13 QUESTIONS BY MR. LANIER:

14 Q. Internet pharmacies. That's
15 different than a storefront pharmacy, right?

16 A. It's different in that it's a
17 website that refers people to a doctor and a
18 storefront pharmacy.

19 Q. To go pick up their pills?

20 A. Or have them delivered, yes.

21 Q. All right. Now, the Internet
22 pharmacy issues that you talked about
23 yesterday, can we agree that this became a
24 huge problem as part of the opioid mess?

25 MR. BENNETT: Objection.

1 Vague.

2 QUESTIONS BY MR. LANIER:

3 Q. Would you agree with me?

4 MR. EPPICH: Objection to form.

5 THE WITNESS: I don't recall it
6 being part of the opioid issue,
7 because the majority of the drugs
8 being dispensed from pharmacies that
9 were related to the Internet were not
10 opioids. They were phentermine and
11 benzodiazepines and those kinds of
12 things.

13 QUESTIONS BY MR. LANIER:

14 Q. So you're not aware of how many
15 opioids were actually being dispensed by
16 these Internet pharmacies?

17 A. There were some, but it wasn't
18 the major part of the pharmacies in the
19 beginning.

20 Q. Interesting.

21 So you believe that the
22 Internet pharmacy problem was more than
23 simply an opioid problem; it applied to other
24 drugs as well?

25 MS. MCCLURE: Form. Misstates

1 the witness' testimony.

2 QUESTIONS BY MR. LANIER:

3 Q. Fair?

4 A. Yes, it did.

5 Q. But it was a huge problem. It
6 was one that required direct attention,
7 right?

8 A. Yes.

9 MS. MCCLURE: Form.

10 QUESTIONS BY MR. LANIER:

11 Q. And in that regard, sir, I got
12 to ask you: Where were these pharmacies
13 getting their drugs?

14 MS. MCCLURE: Form.

15 QUESTIONS BY MR. LANIER:

16 Q. Whether they were opioids or
17 the benzodiazepines or whatever they were,
18 where were they getting them from?

19 MS. MCCLURE: Form.

20 MR. EPPICH: Objection.

21 Foundation.

22 THE WITNESS: From registered
23 wholesalers.

24 QUESTIONS BY MR. LANIER:

25 Q. Are those what we call

1 distributors?

2 A. Yes.

3 Q. Those are companies like

4 AmerisourceBergen?

5 MS. MCCLURE: Form.

6 QUESTIONS BY MR. LANIER:

7 Q. McKesson? Cardinal?

8 A. Yes, they're distributors.

9 Q. I mean, those are in our --
10 going back to our picture drawing, those are
11 these people who take them from the
12 manufacturers and get them to the pharmacies,
13 right?

14 A. That's correct.

15 Q. And so you've got this huge
16 problem with these Internet pharmacies. The
17 pharmacies are getting their drugs from the
18 distributors.

19 My question to you is: Did the
20 major distributors bring this problem to the
21 DEA's attention?

22 A. No.

23 Q. You mean McKesson didn't tell
24 y'all about this?

25 MS. MCCLURE: Form.

1 MR. EPPICH: Object to the
2 form.

3 MS. MCCLURE: Scope.

4 MR. BENNETT: I'm going to join
5 the scope objection.

6 You can answer that question
7 yes or no only.

8 THE WITNESS: No.

9 QUESTIONS BY MR. LANIER:

10 Q. AmerisourceBergen didn't say,
11 "Hey, we figured out there's a big problem
12 out there where there's a diversion issue
13 that's occurring with these Internet
14 pharmacies."

15 You didn't get that huge alert
16 from AmerisourceBergen?

17 MS. MCCLURE: Form. Compound.
18 Scope.

19 MR. BENNETT: Objection.
20 Scope.

21 You can answer that question
22 yes or no only.

23 THE WITNESS: No.

24 QUESTIONS BY MR. LANIER:

25 Q. From Cardinal?

1 MS. MCCLURE: Form.

2 Foundation. Scope.

3 MR. BENNETT: Same objection.

4 Same instruction.

5 THE WITNESS: No.

6 QUESTIONS BY MR. LANIER:

7 Q. Well, aren't these distributors
8 required under law to know their customers?

9 MR. EPPICH: Objection. Form.

10 MS. MCCLURE: Form.

11 MR. EPPICH: Calls for a legal
12 conclusion.

13 MS. SWIFT: Foundation.

14 QUESTIONS BY MR. LANIER:

15 Q. Let me reask it.

16 Haven't you preached
17 vociferously, stridently, strongly, loudly,
18 clearly, that the distributors are required
19 to know their customers?

20 MS. MCCLURE: Form. Compound.

21 MR. EPPICH: Object to the
22 form.

23 THE WITNESS: Yes, and that
24 started with the Distributor
25 Initiative, mostly.

1 QUESTIONS BY MR. LANIER:

2 Q. Well, you say it started there.

3 The obligation for them to know
4 their customers didn't start there. This --
5 did it?

6 MR. EPPICH: Objection.

7 MS. MCCLURE: Form.

8 Argumentative. Leading.

9 MS. SWIFT: Foundation.

10 MR. EPPICH: Objection. Form.

11 Calls for a legal conclusion.

12 THE WITNESS: No, the
13 regulations did not change.

14 QUESTIONS BY MR. LANIER:

15 Q. Right.

16 That law that closes this loop,
17 that requires the distributors to only give
18 to registered and approved pharmacies for
19 legitimate purposes to stop diversion. I
20 mean, knowing their customers, knowing the
21 pharmacies, that's diversion control 101,
22 isn't it?

23 MS. MCCLURE: Form. Narrative

24 by counsel. Foundation. Leading.

25 Misstates. Calls for a legal

1 conclusion.

2 THE WITNESS: Yes, it's basic.

3 MS. MCCLURE: And again,
4 continuing objection to counsel's
5 filling in information on a sheet of
6 paper implying that it comes from the
7 witness before providing the
8 information through counsel.

9 MR. LANIER: If it helps you,
10 I've had at least one judge -- two
11 judges, two federal judges, tell me I
12 have to do that because otherwise it
13 consumes too much time. I don't know
14 if that helps you.

15 MS. MCCLURE: Well, we don't
16 have any such ruling here, so it
17 doesn't help me, and I continue to
18 maintain all of those objections.

19 MR. LANIER: I'll give you a
20 running objection on that so you don't
21 consume my time continuing to say it.

22 MS. MCCLURE: Great.

23 QUESTIONS BY MR. LANIER:

24 Q. Internet pharmacy concerns.

25 Let's talk about what some of the concerns

1 were.

2 Okay?

3 A. Okay.

4 Q. First of all, we know the law
5 is the law is the law.

6 MS. MCCLURE: Form.

7 QUESTIONS BY MR. LANIER:

8 Q. Fair?

9 MR. BENNETT: Objection.

10 Vague.

11 MR. EPPICH: Form. Vague.

12 QUESTIONS BY MR. LANIER:

13 Q. Let me be more clear. Some
14 people don't understand what I mean.

15 This law for the Controlled
16 Substances Act, that doesn't apply just to
17 Internet pharmacies, does it?

18 MR. EPPICH: Objection. Form.

19 THE WITNESS: It applies to all
20 handlers of controlled substances.

21 QUESTIONS BY MR. LANIER:

22 Q. Yeah. There's not a -- where's
23 the note I just used?

24 Aren't distributors required to
25 know their customers, diversion control 101,

1 that's not only applicable to Internet
2 pharmacies; it applies to all their
3 customers, doesn't it?

4 MS. SWIFT: Objection. Form.

5 MS. MCCLURE: Form. Compound.

6 MS. WICHT: Foundation.

7 Mischaracterizes testimony.

8 THE WITNESS: It applies to all
9 registrants, yes.

10 QUESTIONS BY MR. LANIER:

11 Q. Yeah. Everybody in the loop,
12 right?

13 A. Yes.

14 Q. And so when the lawyers talked
15 to you about these Internet pharmacy
16 concerns, let's just make real clear that the
17 law that we're talking about is -- the same
18 law applies to all pharmacies, whether
19 they're Internet or not.

20 MR. EPPICH: Objection to form.

21 QUESTIONS BY MR. LANIER:

22 Q. True?

23 MR. EPPICH: Objection to form,
24 vague, and calls for a legal
25 conclusion.

1 MS. MCCLURE: Leading.

2 MR. BENNETT: You can answer.

3 THE WITNESS: It does.

4 QUESTIONS BY MR. LANIER:

5 Q. I mean, there's no special law
6 for Internet pharmacies, right?

7 MS. MCCLURE: Form.

8 THE WITNESS: There is a
9 separate registration category for
10 Internet pharmacies, so there are some
11 unique rules for Internet pharmacies.

12 QUESTIONS BY MR. LANIER:

13 Q. No fuss about that at all.

14 But in terms of the opioid loop
15 and what the distributors have to do, there's
16 no special law for distributors that pertains
17 to how they treat Internet pharmacies versus
18 others, is there?

19 MS. MCCLURE: Form.

20 THE WITNESS: No.

21 QUESTIONS BY MR. LANIER:

22 Q. And I've got to ask you, these
23 rogue Internet pharmacies -- that's a term we
24 heard yesterday with you and the distributor
25 lawyers, or maybe -- yes.

1 How do these rogue Internet
2 pharmacies get their pills historically?

3 A. Well, all pharmacies get them
4 from wholesalers, from the distributors.

5 Q. Are we supposed to believe that
6 AmerisourceBergen, Cardinal and McKesson
7 can't figure out a fake pharmacy?

8 MS. MCCLURE: Objection.
9 Leading.

10 MR. EPPICH: Objection.

11 MS. MCCLURE: Form.
12 Foundation. Argumentative.

13 THE WITNESS: I don't know.

14 QUESTIONS BY MR. LANIER:

15 Q. I mean, have you heard the
16 expression "ignorance is no excuse"?

17 A. Yes.

18 Q. I mean, if you get pulled over
19 for speeding, do you get out of it if you
20 say, "Hey, I'm sorry, it's not my fault; I
21 wasn't looking at my speedometer"?

22 You can't get out of it that
23 way, can you?

24 MS. MCCLURE: Form.

25 THE WITNESS: I don't know.

1 QUESTIONS BY MR. LANIER:

2 Q. Have you ever tried that one?

3 A. No, I haven't.

4 Q. I'll bet you don't ever try
5 that one either.

6 I mean, that one is just not
7 going to work now, Mr. Mapes, is it?

8 MS. MCCLURE: Form.

9 QUESTIONS BY MR. LANIER:

10 Q. Would you expect it to?

11 MS. MCCLURE: Form.

12 THE WITNESS: I don't know.

13 QUESTIONS BY MR. LANIER:

14 Q. Now, AmerisourceBergen had a
15 meeting with you concerning these Internet
16 pharmacies, and we got Exhibit Number 7 that
17 was handed to us yesterday as part of that
18 meeting, correct?

19 A. That's correct.

20 Q. You had an Internet
21 presentation with AmerisourceBergen,
22 August 10, 2005, and you wrote it up.

23 MS. MCCLURE: Form.

24 THE WITNESS: Actually, someone
25 else wrote it up, but I signed it,

1 yes.

2 QUESTIONS BY MR. LANIER:

3 Q. Okay. And a point was made
4 yesterday by the lawyer for
5 AmerisourceBergen, Ms. McClure, that after
6 the presentation, Mr. Mays --

7 Do you see that?

8 A. Yes, I do.

9 Q. And that's the same Mr. Mays
10 that you wound up reporting to when you went
11 to work for AmerisourceBergen --

12 A. Correct.

13 Q. -- two years later?

14 MS. MCCLURE: Form.

15 QUESTIONS BY MR. LANIER:

16 Q. So two years before you went to
17 work for him, he informed representatives of
18 the DEA that AmerisourceBergen does not want
19 to be associated with this type of illegal
20 activities, and it reviews its customers
21 thoroughly before engaging in business with
22 them.

23 Do you see that?

24 A. I do.

25 Q. Now, I asked you before if

1 distributors were required to know their
2 customers, and you said, "Well, that's what
3 it ultimately worked into, but they didn't
4 always do that earlier."

5 Do you remember that?

6 A. Yes.

7 Q. And I said, "But the law has
8 always been that way," right?

9 MS. MCCLURE: Form. Calls for
10 a legal conclusion.

11 THE WITNESS: It has.

12 QUESTIONS BY MR. LANIER:

13 Q. And we see that here, that
14 AmerisourceBergen was trying to tell you or
15 the DEA that they were, in fact, reviewing
16 their customers thoroughly before engaging in
17 business with them, and they don't want to be
18 associated with this type of illegal
19 activity.

20 Do you see that?

21 A. I do.

22 Q. Now this, sir, shows us -- let
23 me go back to this.

24 So AmerisourceBergen, you have
25 this meeting with them. If we look

1 thoroughly at Exhibit Number 7, it shows the
2 glaring problems with the way Amerisource was
3 doing business, doesn't it?

4 MS. MCCLURE: Objection.

5 Leading. Foundation. Form.

6 THE WITNESS: It shows examples
7 that we use to -- to them about what
8 we considered Internet pharmacies that
9 they had distributed to.

10 QUESTIONS BY MR. LANIER:

11 Q. Well, it not only does that,
12 sir, but it says in very plain English, the
13 purpose of your meeting with them was "to
14 address the illegal" --

15 Do you see that word?

16 A. Yes.

17 Q. -- "the illegal domestic
18 Internet pharmacy problem and their source of
19 supply."

20 Do you see that as well?

21 A. I do.

22 Q. The source of their supply, if
23 we're telling the whole truth, was
24 AmerisourceBergen, among others, true?

25 MS. MCCLURE: Objection to

1 form. Leading. Speculation.

2 Foundation.

3 THE WITNESS: Yes, in these
4 examples.

5 QUESTIONS BY MR. LANIER:

6 Q. Yeah.

7 In other words,
8 AmerisourceBergen may have language where
9 they tell you, "Oh, look, we don't want to be
10 associated with this. We review our
11 customers thoroughly before engaging in
12 business with them."

13 They say that to the DEA. You
14 see?

15 A. Yes.

16 Q. And the lawyer for
17 AmerisourceBergen has you look at that for
18 the jury and -- you remember?

19 A. Yes.

20 Q. And she said, "And if there was
21 any other information, it would be course of
22 practice to put it into this memo so we can
23 trust that reasonably this is all the
24 information that there was."

25 MS. MCCLURE: Form.

1 QUESTIONS BY MR. LANIER:

2 Q. Right?

3 A. Yes, that's what she said.

4 Q. Do you have the expression --
5 there's a lot of different ones. You know,
6 it's one thing to say one thing, but the
7 truth isn't always what people say.

8 Right?

9 MS. MCCLURE: Form. Leading.

10 THE WITNESS: That's correct.

11 QUESTIONS BY MR. LANIER:

12 Q. You've heard the expression "I
13 want to see someone walk the walk instead of
14 talk the talk"?

15 A. Yes.

16 Q. Or "practice what they preach"?

17 A. Yes.

18 (Mapes Exhibit 26 marked for
19 identification.)

20 QUESTIONS BY MR. LANIER:

21 Q. Okay. And the reason I'm
22 asking that is because I've looked at Exhibit
23 Number 26. I want to give a copy of it to
24 you and the lawyers around the room, a chance
25 for the jury to see it.

1 Do you have Exhibit Number 26
2 in front of you?

3 A. I do.

4 Q. See --

5 MR. BENNETT: Counsel, may he
6 have a moment to finish reviewing the
7 document?

8 MR. LANIER: Yeah. The only
9 part that I need to ask you about
10 initially is the very bottom e-mail
11 from you. It says, "Michael R.
12 Mapes," and it's a real short, little
13 e-mail.

14 So if you'll review it, and in
15 the interest of time I'll read it to
16 the jury at the same time you're
17 reading it.

18 QUESTIONS BY MR. LANIER:

19 Q. Do you see that e-mail from you
20 down at the bottom?

21 A. Yes.

22 Q. "Steve, at the meeting at
23 DEA" --

24 And that Steve is Steve Mays?
25 He's the fellow you ultimately started

1 working for a couple years later?

2 MS. MCCLURE: Form.

3 QUESTIONS BY MR. LANIER:

4 Q. Right?

5 A. Yes.

6 Q. "Steve, at the meeting at DEA,
7 I was not sure if your company had sold
8 controlled substances to any of the
9 pharmacies that were used as examples in the
10 presentation. We checked ARCOS" --

11 What is ARCOS?

12 A. It's a system that collects
13 data from registrants concerning sales of
14 Schedule II and III narcotic drugs.

15 Q. It is a system you guys have
16 that will get all of the information about
17 who's selling the drugs and who they're
18 selling them to?

19 A. Yes.

20 Q. All right. "We checked the
21 system that collects info on drug sales,
22 ARCOS, and found you made several sales to
23 Example Number 2 on page 10 of the printed
24 presentation. It's a Florida pharmacy that's
25 now out of business. Your sales were mostly

1 hydrocodone products."

2 That's an opiate drug, isn't
3 it?

4 A. It is.

5 Q. So while the lawyer will show
6 you and the jury that Mr. Mays informed you
7 guys that they didn't want to be associated
8 with this type of illegal activity and they
9 reviewed their customers thoroughly, the
10 truth of the matter is, y'all went back and
11 checked and AmerisourceBergen was, in fact,
12 supplying drugs to this illegal, domestic
13 Internet pharmacy problem, correct?

14 MS. MCCLURE: Form.

15 Foundation. Leading.

16 MR. BENNETT: Objection.

17 Scope.

18 You can answer that question
19 yes or no only.

20 THE WITNESS: Yes.

21 QUESTIONS BY MR. LANIER:

22 Q. And you said that the Internet
23 pharmacy problem was not generally opioids,
24 it was more benzo drugs, but this was mostly
25 opioid.

1 MS. MCCLURE: Form. Leading.

2 QUESTIONS BY MR. LANIER:

3 Q. Wasn't it?

4 A. Yes.

5 Q. So we can look at the entire
6 story and see that AmerisourceBergen's
7 business included the illegal Internet
8 pharmacies that were subject to your
9 investigation on the issue of opioids, true?

10 MR. BENNETT: Form.

11 Foundation. Leading.

12 THE WITNESS: It included one
13 of the Internet pharmacies that we
14 used as an example in the
15 presentations, yes.

16 QUESTIONS BY MR. LANIER:

17 Q. And you don't know whether or
18 not the DEA checked on the other example
19 y'all used, do you?

20 MS. MCCLURE: Form.

21 Mischaracterizes the document.

22 THE WITNESS: I believe that's
23 the only one of the examples in the
24 presentation that AmerisourceBergen
25 had distributed to.

1 QUESTIONS BY MR. LANIER:

2 Q. And you have three examples in
3 the presentation. So you've got
4 AmerisourceBergen on one-third of them?

5 A. Yes.

6 Q. Okay. Still on the subject of
7 Internet pharmacies.

8 You met with McKesson on the
9 Internet pharmacies, didn't you?

10 A. Yes.

11 Q. McKesson is another one of
12 these distributors, correct?

13 A. Yes, they are a distributor.

14 Q. And McKesson was participating
15 in the problem, too, weren't they?

16 MR. EPPICH: Objection to the
17 form. Foundation. Vague.

18 MS. MCCLURE: Leading.

19 MR. BENNETT: Objection.
20 Vague. Objection. Scope.

21 QUESTIONS BY MR. LANIER:

22 Q. The question pending is,
23 McKesson was participating in the problem,
24 too, true?

25 MR. EPPICH: Same objections.

1 THE WITNESS: I don't know to
2 what extent they were involved in
3 distributing to any of the pharmacies
4 that are in the examples here.

5 QUESTIONS BY MR. LANIER:

6 Q. All right. Well, you've seen
7 Exhibit Number 8, which is the presentation
8 that y'all did -- write-up of the
9 presentation that y'all did with McKesson,
10 September 1 of 2005, correct?

11 A. Yes.

12 (Mapes Exhibit 27 marked for
13 identification.)

14 QUESTIONS BY MR. LANIER:

15 Q. And then if we want to take it
16 a step further, I'll give you a document that
17 we'll mark as Exhibit Number 27.

18 And Exhibit Number 27 -- do you
19 have it in front of you?

20 A. I do.

21 Q. -- is one where -- take a
22 moment and look at it, but I'll show you the
23 part that I'm interested in so it saves
24 everybody some time.

25 It talks about John Gilbert,

1 the legal counsel for McKesson, representing
2 McKesson, contacting you and Kyle Wright,
3 responding to questions about sales of
4 controlled substances by McKesson to six
5 Internet pharmacies that were located in the
6 Miami field division.

7 And then I'm specifically going
8 to ask you about this. You'll see it
9 references that they were briefed -- McKesson
10 was briefed by the DEA on September 1st of
11 2005, and the ARCOS report for the month of
12 October revealed that McKesson distribution
13 center in Lakeland, Florida, distributed over
14 2 million dosage units of hydrocodone --

15 Now, that's an opioid, right?

16 A. Yes, it is.

17 Q. -- to six suspected illicit
18 Internet pharmacies. They even filed
19 suspicious order reports involving these same
20 pharmacies but still distributed them.

21 Do you see that?

22 A. I do.

23 Q. Does that help refresh your
24 recollection of whether or not McKesson was
25 participating in this problem of Internet

1 pharmacies as well, illegal Internet
2 pharmacies?

3 MR. EPPICH: Objection to form.
4 Characterization.

5 THE WITNESS: It does.

6 QUESTIONS BY MR. LANIER:

7 Q. And in fact, were they
8 participating in the problem? Is that true?

9 MR. EPPICH: Objection to form.
10 Vague. Foundation.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. LANIER:

13 Q. And the McKesson lawyer, if we
14 look at the whole truth, he never showed you
15 that follow-up document, did he?

16 MR. EPPICH: Objection.
17 Argumentative.

18 THE WITNESS: Which
19 follow-up --

20 QUESTIONS BY MR. LANIER:

21 Q. The one that I had to show you
22 because you couldn't remember whether or not
23 McKesson contributed to this problem. And I
24 showed you Exhibit 27.

25 MR. EPPICH: Objection. Form.

1 Misstates testimony.

2 QUESTIONS BY MR. LANIER:

3 Q. You'd never been shown that
4 before, had you?

5 MR. EPPICH: Objection. Form.

6 Misstates testimony.

7 THE WITNESS: No, I had not.

8 QUESTIONS BY MR. LANIER:

9 Q. And so now that you see it and
10 see the whole truth, you've got an ability to
11 determine whether or not McKesson was
12 participating, fair?

13 A. Yes.

14 Q. All right. Now, one other
15 thing I found interesting. When the lawyer
16 for McKesson was asking you questions, he
17 said, "You would typically note in the
18 meeting," and he referenced the meeting
19 notes, "if more had been said that meeting."

20 MR. EPPICH: Objection.

21 Misstates.

22 QUESTIONS BY MR. LANIER:

23 Q. He was talking about Exhibit
24 Number 7.

25 Do you recall that?

1 MR. EPPICH: Objection.

2 Misstates testimony.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. LANIER:

5 Q. And in truth of fact, he's
6 probably right. If something significant had
7 been said at the meeting, y'all would have
8 noted it, true?

9 MR. EPPICH: Objection.

10 Misstates. Leading. Form.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. LANIER:

13 Q. Which tells us that the
14 distributor did not confess to the problem at
15 the meeting.

16 MR. EPPICH: Objection.

17 QUESTIONS BY MR. LANIER:

18 Q. Because McKesson -- if McKesson
19 had said, "Hey, we're doing this," or "We're
20 selling with blinders on and we're not
21 looking," or "We hadn't been following this
22 stuff," or "We haven't been checking for
23 diversion the way the law says," if they had
24 told you at the meeting, you surely would
25 have noted it, wouldn't you?

1 MR. EPPICH: Objection to the
2 form. Misstates testimony.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. LANIER:

5 Q. So they didn't tell you that at
6 the meeting, we can surmise. Y'all had to go
7 dig it out from all of the files that you've
8 got in the ARCOS data, as you call it, right?

9 A. Yes.

10 MR. EPPICH: Objection to form.

11 QUESTIONS BY MR. LANIER:

12 Q. In fact, McKesson not only did
13 it, but y'all wound up sending them a show
14 cause order, didn't you?

15 MS. MCCLURE: Scope.

16 THE WITNESS: I don't recall if
17 there was one.

18 QUESTIONS BY MR. LANIER:

19 Q. There was at least discussion
20 of one. I think I may be one when I say "one
21 issued."

22 There was discussion of a show
23 cause order, right?

24 MR. EPPICH: Objection.

25 Foundation. Form.

1 QUESTIONS BY MR. LANIER:

2 Q. Did you know that when that
3 lawyer was asking you questions yesterday,
4 that there had been a discussion of a show
5 cause order?

6 MS. WICHT: Scope.

7 MR. EPPICH: I'll object to the
8 scope and form.

9 QUESTIONS BY MR. LANIER:

10 Q. Can you answer the question,
11 please?

12 A. I'm reading through it.

13 Q. That's coming up for the next
14 question. First answer the one pending,
15 please.

16 A. It had been mentioned at a
17 meeting with McKesson as of -- as a possible
18 sanction.

19 (Mapes Exhibit 28 marked for
20 identification.)

21 QUESTIONS BY MR. LANIER:

22 Q. Yeah.

23 I've just handed you Exhibit
24 Number 28.

25 Well, let's -- I don't think in

1 light of your answer that I need to deal with
2 that exhibit, so you can set it aside. We'll
3 come back to it if we need to.

4 I mean, ultimately the Lakeland
5 problem is what led to a \$13 million
6 settlement between McKesson and the US
7 Department of Justice, or the DEA, in 2008.

8 Did you know that?

9 MR. EPPICH: Objection to form.
10 Misstates facts.

11 THE WITNESS: No, I didn't -- I
12 wasn't aware of everything that led to
13 the settlement because I had retired
14 prior to that.

15 QUESTIONS BY MR. LANIER:

16 Q. Did you ever see the settlement
17 and release agreement?

18 A. I did not.

19 (Mapes Exhibit 29 marked for
20 identification.)

21 QUESTIONS BY MR. LANIER:

22 Q. I'll hand it to you -- a copy
23 of it to you marked as Exhibit Number 29.
24 It's long. I don't need you to -- you're
25 welcome to go through the whole thing, but I

1 want to direct your attention specifically to
2 the background section. Just right there at
3 the start.

4 August 4, 2006, you were still
5 at the DEA at that time, weren't you?

6 A. I was.

7 Q. By its deputy administrator,
8 Joseph T. Rannazzisi, issued an order to show
9 cause to McKesson with respect to its
10 Lakeland distribution center in Lakeland,
11 Florida.

12 Do you see that?

13 A. I do.

14 Q. Order number 1 alleged, among
15 other things, that "McKesson failed to
16 maintain effective controls at the Lakeland
17 facility against diversion of particular
18 controlled substances."

19 Do you see that as well?

20 A. I do.

21 MR. EPPICH: Objection. Form.

22 QUESTIONS BY MR. LANIER:

23 Q. And then it says that,
24 "Whereas, on November 1, 2007, Mr. Rannazzisi
25 issued a second order to show cause to

1 McKesson with respect to its Landover
2 distribution in Maryland for failing to
3 maintain effective controls."

4 Did you see that as well?

5 MR. EPPICH: Objection. Form.
6 Foundation.

7 THE WITNESS: Yes, I see that.

8 QUESTIONS BY MR. LANIER:

9 Q. Now, when defendants fail to
10 maintain effective control, is that a good
11 thing or a bad thing?

12 MR. EPPICH: Objection. Form.

13 THE WITNESS: It's a bad thing.

14 QUESTIONS BY MR. LANIER:

15 Q. Why?

16 A. Because that may allow drugs to
17 be diverted.

18 Q. And then I've got to fill in
19 the blank here on my question for you.

20 In response to the questions by
21 the lawyer from McKesson, "If more had been
22 said at the meetings of note, it would have
23 been noted," no distributor confessed.

24 That's true, isn't it?

25 MS. MCCLURE: Objection. Form.

1 Misstates testimony. Argumentative.

2 MR. EPPICH: I'll join in those
3 objections. Foundation. Vague.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. LANIER:

6 Q. Okay. Next. All of the -- let
7 me do it this way.

8 The questions that I've asked
9 you about Internet pharmacies, as far as
10 Cardinal Health is concerned, you also met
11 with them, right?

12 A. With counsel for Cardinal
13 Health, yes.

14 Q. And we have the notes from that
15 as Exhibit Number 9 that we looked at
16 yesterday, correct?

17 MS. WICHT: Object to form.

18 THE WITNESS: Yes, that is
19 correct.

20 QUESTIONS BY MR. LANIER:

21 Q. And Cardinal Health never
22 confessed to having problems?

23 MS. WICHT: Object to form.

24 QUESTIONS BY MR. LANIER:

25 Q. Did they?

1 MS. WICHT: I'm sorry. Object
2 to form, foundation and vague.

3 THE WITNESS: They did not.

4 QUESTIONS BY MR. LANIER:

5 Q. And yet you know Cardinal
6 Health was also trafficking in the pills to
7 the Internet pharmacies that were illegal or
8 illicit, right?

9 MS. WICHT: Object to form.
10 Foundation. Vague. Argumentative.

11 THE WITNESS: They were selling
12 pills to pharmacies, yes.

13 QUESTIONS BY MR. LANIER:

14 Q. Failing to maintain effective
15 controls against diversion, true?

16 MS. WICHT: Object to form.
17 Foundation. Calls for a legal
18 conclusion. Leading. Object to the
19 improper demonstrative.

20 THE WITNESS: Yes.

21 (Mapes Exhibit 30 marked for
22 identification.)

23 QUESTIONS BY MR. LANIER:

24 Q. Okay. Now, if we want to see
25 specifically some of what you've done, I

1 found a color set we can show the jury of
2 your presentation. I think the record will
3 reflect in the exhibit, it's Exhibit 30. I'm
4 marking it now. That this is the one that
5 you gave to AmerisourceBergen.

6 But your presentation was
7 basically the same to each of these
8 distributors, true?

9 MS. MCCLURE: Asked and
10 answered.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. LANIER:

13 Q. So Exhibit 30 is the actual
14 data.

15 And you told these folks about
16 these Internet issues, but the Internet
17 issues had been around for years before this
18 meeting, hadn't they?

19 MS. MCCLURE: Form.
20 Foundation. Misstates the witness'
21 testimony.

22 THE WITNESS: I'm not certain
23 what time the Internet issues started.

24 QUESTIONS BY MR. LANIER:

25 Q. Well, look on Slide 9.

1 The Internet policy, at least,
2 that you reference --

3 MR. BENNETT: Hang on a second,
4 Counsel. He's trying to find --

5 MR. LANIER: Oh, yeah, because
6 they're not numbered.

7 QUESTIONS BY MR. LANIER:

8 Q. So it's the one that says "DEA
9 Internet policy."

10 Do you see that?

11 A. I do.

12 Q. The Internet policy was 2001,
13 the policy that you said was specific for the
14 Internet registration issues, right?

15 A. No, I believe that's the policy
16 about prescriptions being issued by a doctor
17 acting in the usual course of professional
18 practice, not specifically relating to
19 Internet.

20 Q. Okay. So the 2001 is not the
21 Internet policy date?

22 A. No.

23 Q. Thank you. That helps clarify.

24 If you will flip to page 21,
25 it's the slide entitled -- the first one

1 entitled "Suspicious Orders." Several slides
2 have that title.

3 Do you see it?

4 A. Yes.

5 Q. Now, the suspicious orders --
6 21 CFR means the Code of Federal Regulations.
7 That's the regulations that have been enacted
8 that have the authority of law, right?

9 MS. MCCLURE: Leading.

10 THE WITNESS: Correct.

11 QUESTIONS BY MR. LANIER:

12 Q. 1301.74, that's part of what
13 was asked you about yesterday, correct?

14 A. That's correct.

15 Q. It requires that the
16 registrants design and operate a system to
17 identify suspicious orders.

18 Do you see that?

19 A. Yes.

20 Q. And registrants here are these
21 distributors in our closed-loop drawing,
22 correct?

23 MS. MCCLURE: Form.

24 Foundation. Misstates.

25 THE WITNESS: Yes, among

1 others.

2 QUESTIONS BY MR. LANIER:

3 Q. Yeah, you've got to register
4 also as a manufacturer and a pharmacist, but
5 this requirement to identify suspicious
6 orders, you were specifically talking at that
7 point in time to the distributors, fair?

8 MS. MCCLURE: Leading.

9 THE WITNESS: Yes.

10 QUESTIONS BY MR. LANIER:

11 Q. And this law that requires that
12 they design and operate a system to identify
13 these suspicious orders had been in effect
14 since when?

15 MS. MCCLURE: Form. Calls for
16 a legal conclusion.

17 THE WITNESS: I don't know when
18 that regulation first was in effect.

19 QUESTIONS BY MR. LANIER:

20 Q. But it was the 1970s, wasn't
21 it?

22 MS. MCCLURE: Leading.

23 THE WITNESS: I believe so.

24 QUESTIONS BY MR. LANIER:

25 Q. And this is the same law that

1 requires them to report suspicious orders to
2 the DEA when discovered, fair?

3 MS. MCCLURE: Form. Calls for
4 a legal conclusion.

5 THE WITNESS: It is.

6 QUESTIONS BY MR. LANIER:

7 Q. So this is the company's
8 requirement to design and operate the system.
9 It's not the DEA's job --

10 MS. MCCLURE: Same objection.

11 QUESTIONS BY MR. LANIER:

12 Q. -- right?

13 A. That's correct.

14 Q. And then on suspicious orders,
15 report -- the next slide, "Reporting a
16 suspicious order to the DEA does not" --

17 And you put that in all caps
18 for your presentation, didn't you?

19 A. Yes.

20 Q. -- "does not relieve the
21 distributor of the responsibility to maintain
22 effective controls."

23 You can't just report the
24 suspicious order; you still have to maintain
25 effective controls, don't you?

1 A. Yes.

2 Q. Because it's the distributor's
3 decision whether or not they're going to ship
4 those suspicious drugs or not, isn't it?

5 MS. MCCLURE: Form. Leading.

6 THE WITNESS: Yes.

7 QUESTIONS BY MR. LANIER:

8 Q. And that's your next slide.
9 You said, "The DEA cannot tell a distributor
10 if an order is legitimate or not. The
11 distributor must determine which orders are
12 suspicious and then make a sales decision."

13 Correct?

14 MR. EPPICH: Objection.

15 Misstates the document.

16 THE WITNESS: Correct.

17 QUESTIONS BY MR. LANIER:

18 Q. Now, that's kind of a weird
19 thing, but let's -- at the risk of stating
20 the obvious, every drug the distributor
21 sells, the distributor's making money on that
22 transaction, right?

23 MS. MCCLURE: Form.

24 Foundation. Calls for speculation.

25 Leading.

1 THE WITNESS: I don't know for
2 certain, but we were never involved in
3 the financial portion of things.

4 QUESTIONS BY MR. LANIER:

5 Q. Well, you know that there are
6 companies that operate for profit?

7 A. Yes.

8 Q. And you know they make their
9 profit distributing drugs. You call them a
10 wholesaler at times, right?

11 A. Yes.

12 MS. MCCLURE: Form.

13 QUESTIONS BY MR. LANIER:

14 Q. Because they take from the
15 manufacturer and they put in the hands of the
16 pharmacies, right?

17 MR. EPPICH: Objection. Form.
18 Foundation. Calls for speculation --

19 MS. MCCLURE: Leading.

20 MR. EPPICH: -- to this and the
21 prior question.

22 THE WITNESS: Yes.

23 QUESTIONS BY MR. LANIER:

24 Q. And you know that that's
25 generally how they make their money. They're

1 not sitting on the street corner with a cup
2 saying, "We do our work for free; would you
3 please give us money"?

4 MS. MCCLURE: All the same
5 objections, plus argumentative, plus
6 compound.

7 THE WITNESS: It would be an
8 assumption that that's how they're
9 making their money.

10 QUESTIONS BY MR. LANIER:

11 Q. Yeah. Have you ever known a
12 big distributor of opioids that's a nonprofit
13 company?

14 A. No.

15 Q. All right. So you've got a
16 company that's got to make a sales decision,
17 knowing if they ship and sell the product
18 they make their money, most likely. And yet
19 it's their decision, it's not the DEA's, in
20 the normal course of events, absent some
21 order, right?

22 MR. EPPICH: Objection. Form.
23 Misstates testimony.

24 MS. MCCLURE: Leading.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. LANIER:

2 Q. And so in your summary sheet,
3 which is right toward the end, you had to
4 tell them that any "distributor selling
5 controlled substances that are being
6 dispensed outside the course of professional
7 practice must stop immediately."

8 You had to tell them that,
9 right?

10 MS. MCCLURE: Form. Compound.
11 Leading.

12 THE WITNESS: We did tell them
13 that, yes.

14 QUESTIONS BY MR. LANIER:

15 Q. But, I mean, that's a gimme.
16 Should be, shouldn't it?

17 MS. MCCLURE: Argumentative.
18 Form. Foundation. Leading.

19 THE WITNESS: It should be.

20 QUESTIONS BY MR. LANIER:

21 Q. Right before you left the DEA
22 to go do work as a consultant for
23 AmerisourceBergen and others, there was a
24 show cause order that was issued. It was
25 Exhibit 12 that you were shown yesterday,

1 this order to show cause and immediate
2 suspension of registration to
3 AmerisourceBergen in 2007.

4 Do you see that?

5 A. Yes.

6 Q. And the order to show cause was
7 based on the respondent -- that would be
8 AmerisourceBergen, right?

9 MS. MCCLURE: Form.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. LANIER:

12 Q. -- failing to maintain
13 effective controls against diversion of
14 particular controlled substances, in
15 violation of the law.

16 Do you see that?

17 A. I do.

18 Q. Several of their largest
19 purchasers of hydrocodone --

20 That's an opioid, right?

21 A. It is.

22 Q. -- in 2005 and 2006 were
23 pharmacies engaged in schemes to dispense
24 controlled substances based on prescriptions
25 that are issued for other than a legitimate

1 medical purpose and by physicians acting
2 outside the usual course of professional
3 practice.

4 That's while you were there,
5 wasn't it?

6 A. Yes.

7 Q. I mean, y'all were listing it
8 here. Y'all have got over a million doses of
9 these opioids in just one year at one place,
10 right?

11 MS. MCCLURE: Form.

12 THE WITNESS: Correct.

13 QUESTIONS BY MR. LANIER:

14 Q. And you've got them doing it
15 under similarly suspicious circumstances to a
16 number of different pharmacies, don't you?

17 MS. MCCLURE: Form. Vague.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. LANIER:

20 Q. And then y'all's investigation
21 and your work and what you knew is that
22 public information regarding several of the
23 pharmacy customers was readily available to
24 AmerisourceBergen.

25 MS. MCCLURE: Form. Scope.

1 QUESTIONS BY MR. LANIER:

2 Q. That's true, isn't it?

3 A. Yes.

4 Q. And had AmerisourceBergen
5 attempted to learn about these pharmacies
6 prior to filling the suspicious orders, they
7 would have known many of the named pharmacies
8 were filling prescriptions issued by
9 physicians acting outside the usual course of
10 professional practice, in violation of the
11 law, wouldn't they?

12 MS. MCCLURE: Form.

13 THE WITNESS: That's correct.

14 QUESTIONS BY MR. LANIER:

15 Q. And this is all work that
16 happened while you were at the DEA, isn't it?

17 A. It is.

18 Q. It continues on page 3 to talk
19 about how they sold over 5.2 million dose
20 units of this opioid to pharmacies that bore
21 the characteristics that the DEA described in
22 that very October -- August 2005 meeting,
23 correct?

24 MS. MCCLURE: Form.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. LANIER:

2 Q. So y'all met with them. You
3 made it clear what the law was, and they,
4 afterwards, continued to sell in violation of
5 the law, based upon the way you understood
6 it, correct?

7 MS. MCCLURE: Objection. Form.
8 Foundation. Leading.

9 THE WITNESS: Correct.

10 QUESTIONS BY MR. LANIER:

11 Q. Interestingly, you were shown
12 yesterday Exhibit Number 18, which is this
13 summary of the DEA HDMA meeting.

14 HDMA, who are they?

15 A. They're a trade association,
16 the Healthcare Distribution Management
17 Association.

18 Q. This is a trade association.
19 This is an organization that the pharmacy
20 companies fund and join, right?

21 MS. MCCLURE: Form.

22 MS. WICHT: Object to form.

23 MS. MCCLURE: Foundation.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MR. LANIER:

2 Q. And you were meeting with them.

3 You were one of the DEA attendees, right?

4 A. Correct.

5 Q. And then I was reading this
6 Exhibit 18 they showed you yesterday, and it
7 says that y'all "prioritize who to meet with
8 on a combination of wholesale distributor
9 sales volumes and tracing back to where you
10 felt the source of the products for illicit
11 Internet pharmacies was located."

12 Is that true?

13 MS. MCCLURE: Form.

14 QUESTIONS BY MR. LANIER:

15 Q. So in other words, y'all met
16 with the volume source problems first?

17 A. We met with those wholesalers
18 that handled the largest volumes of
19 controlled substances first.

20 Q. Yeah.

21 So that means you met first
22 with the AmerisourceBergen, I guess, right?

23 A. Yes.

24 Q. Who did you meet with next?

25 A. I believe it was Cardinal.

1 Q. Who did you meet with next?

2 A. McKesson.

3 Q. Have you heard the expression
4 "the big three" when it comes to
5 distributors?

6 A. Yes.

7 Q. Those are the big three, aren't
8 they?

9 A. They are referred to as that.

10 Q. Now, it's apparent by us
11 reading this -- it's apparent by us reading
12 this that holding shipments that were
13 suspicious was a new thing for Amerisource in
14 2007, true?

15 A. Yes.

16 Q. I mean, they made that point
17 yesterday. They never did that before, did
18 they, to your knowledge?

19 A. Not that I'm aware of, no.

20 Q. I mean, think of this: Before
21 that, AmerisourceBergen would be suspicious
22 that this might be an order that could be
23 diverted, and they'd just sell it anyway --

24 MS. MCCLURE: Form.

25 Foundation.

1 QUESTIONS BY MR. LANIER:

2 Q. -- wouldn't they?

3 A. They were reporting things
4 after shipment, yes.

5 Q. In other words, oh, we have our
6 suspicions that this may be illegal, may be
7 used for wrong purposes, may hurt the public,
8 may hurt health. We have suspicions this can
9 be diverted, but we're going to sell anyway.

10 MS. MCCLURE: Objection.

11 QUESTIONS BY MR. LANIER:

12 Q. That was their policy --

13 MS. MCCLURE: Objection.

14 Misstates.

15 QUESTIONS BY MR. LANIER:

16 Q. -- before 2007, wasn't it?

17 MS. MCCLURE: Objection.

18 Misstates the record. Form.

19 Foundation.

20 THE WITNESS: I don't know that
21 it was a policy of theirs.

22 QUESTIONS BY MR. LANIER:

23 Q. Well, it was their practice --

24 MS. MCCLURE: All the same.

25

1 QUESTIONS BY MR. LANIER:

2 Q. -- wasn't it?

3 A. Yes.

4 Q. I mean, you told these
5 companies that under the old Harrison
6 Narcotic Act -- you know what that is, right?

7 A. Yes.

8 Q. That's what preceded the
9 Controlled Substances Act?

10 A. Correct.

11 Q. And you would talk to these
12 companies about this US Supreme Court
13 explaining the need to hold suspicious
14 shipments, didn't you?

15 A. In those meetings, yes.

16 Q. And the case you were citing
17 from the US Supreme Court -- I looked at your
18 meeting notes -- 1943, Direct Sales versus
19 United States, correct?

20 A. Yes.

21 Q. So you knew since 1943 about
22 the need to hold suspicious orders --

23 MR. EPPICH: Object to form.

24 QUESTIONS BY MR. LANIER:

25 Q. -- didn't you?

1 MR. EPPICH: Object to form.

2 THE WITNESS: I don't recall
3 the details of that case and what it
4 refers to, but it was a case from...

5 QUESTIONS BY MR. LANIER:

6 Q. From 1943, Direct Sales versus
7 the United States, where the petitioner was a
8 registered drug manufacturer and wholesaler,
9 and they were selling to Dr. Tate in such
10 quantities and so frequently that it must
11 have known he couldn't dispense the amounts
12 lawfully, and so he was distributing them
13 illegally. And they were continuing to ship
14 to him even after they should have known
15 this, and that's what they got nailed for.

16 That's the case, isn't it?

17 MS. MCCLURE: Form.

18 MR. EPPICH: Objection.

19 THE WITNESS: Yes.

20 QUESTIONS BY MR. LANIER:

21 Q. And you included that case in
22 what you gave the companies?

23 A. Yes, we did.

24 Q. And that was an opioid case,
25 wasn't it?

1 MS. MCCLURE: Form.

2 THE WITNESS: It was.

3 QUESTIONS BY MR. LANIER:

4 Q. So this idea that, ah, geez, we
5 couldn't know, I mean, you gave them a case
6 that said since 1943 the US Supreme Court
7 said that you should be holding these things,
8 right?

9 MS. MCCLURE: Form.

10 Foundation. Misstates.

11 THE WITNESS: Yes, the Supreme
12 Court said that you should have known.

13 QUESTIONS BY MR. LANIER:

14 Q. And with all due respect, have
15 you seen a chart of how the opioid crisis
16 exploded in Summit and Cuyahoga Counties --
17 Cuyahoga County? Sorry, I'm from Lubbock,
18 Texas. We don't do that well.

19 Cuyahoga County?

20 A. No, I have not.

21 Q. So no one showed you the chart
22 that was prepared, and it's in the expert
23 report of Craig McCann. I want to make it
24 real clear he's one of our experts, but I
25 don't think anybody disputes this chart.

1 MS. MCCLURE: Note for the
2 record significant laughter, and
3 objection to characterization
4 regarding the plaintiffs' exhibit.

5 QUESTIONS BY MR. LANIER:

6 Q. This is actually from Rafalski,
7 Jim Rafalski, originally. And it shows --

8 MR. EPPICH: Objection.

9 QUESTIONS BY MR. LANIER:

10 Q. -- the huge -- I mean, boy,
11 this is all we had. If we were just looking
12 at this, you'd say, man, what happened in
13 1999 and 2000? All of a sudden the sales
14 just went through the roof?

15 Do you see that?

16 MS. SWIFT: Objection.

17 MS. MCCLURE: Objection.

18 Characterization. Scope.

19 THE WITNESS: I see an
20 increase.

21 QUESTIONS BY MR. LANIER:

22 Q. Yeah. And then -- but that's
23 nothing compared to what happened after that.
24 That's a mountain, isn't it?

25 MS. SWIFT: Objection.

1 Mischaracterizes the evidence.

2 MS. MCCLURE: Objection.

3 Narrative. Scope.

4 THE WITNESS: Yes, it's another
5 large increase.

6 QUESTIONS BY MR. LANIER:

7 Q. We're taking the deposition,
8 your deposition today, in Colorado Springs
9 where you live, right?

10 A. Yes.

11 Q. Is that Pikes Peak I saw out
12 the window?

13 A. Could have been.

14 Q. 14,000-plus feet?

15 A. Yes.

16 Q. I mean, you know mountains,
17 don't you?

18 MS. MCCLURE: Form.

19 THE WITNESS: Yes.

20 QUESTIONS BY MR. LANIER:

21 Q. So when a company sees a
22 suspicious order, the company's got to make
23 this decision: Do we sell it and make our
24 money, or do we hold it and investigate it?
25 That's the company's decision,

1 right?

2 MS. MCCLURE: Form. Compound.

3 THE WITNESS: It is.

4 QUESTIONS BY MR. LANIER:

5 Q. Always has been the company's
6 decision, hasn't it?

7 A. It has.

8 Q. And common sense weighs in to
9 this just as much as the law and everything
10 else, doesn't it?

11 MS. MCCLURE: Form.

12 THE WITNESS: Yes.

13 QUESTIONS BY MR. LANIER:

14 Q. And decency weighs in on this,
15 too, and concern for public good and public
16 health, right?

17 MS. MCCLURE: Form.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. LANIER:

20 Q. And so faced with that on one
21 side of the coin, and on the other side of
22 the coin or the ledger you've got corporate
23 profits and business, right?

24 MS. MCCLURE: Form.

25 THE WITNESS: Yeah, those are

1 factors they need to consider.

2 QUESTIONS BY MR. LANIER:

3 Q. All right. In this regard, I
4 asked Joe Rannazzisi some questions in his
5 deposition, and I'd like to -- I've got the
6 notes that I made from his deposition, and
7 I'd like to just ask you some questions based
8 on those notes to see if you agree or
9 disagree?

10 Okay?

11 A. Okay.

12 MS. MCCLURE: Objection. Based
13 on the notes, mischaracterized
14 Mr. Rannazzisi's actual testimony.

15 QUESTIONS BY MR. LANIER:

16 Q. "All registrants are required
17 to maintain effective control against
18 diversion." I'm going to put your answers in
19 blue.

20 Do you agree or disagree?

21 A. Agree.

22 Q. And so this is blue for
23 Mr. Mapes.

24 "The registrant is required to
25 report a suspicious order to the DEA."

1 Do you agree?

2 A. Yes.

3 Q. "The registrant is required to
4 maintain a system to detect suspicious
5 orders."

6 Do you agree with that part?

7 A. Yes.

8 Q. And "It's a business decision,
9 but they must identify suspicious orders."

10 Do you agree?

11 A. Yes.

12 Q. And "They should not ship
13 suspicious orders without full due diligence
14 that resolves their suspicions."

15 Do you agree?

16 A. I agree.

17 MS. WICHT: Object to form on
18 the last question.

19 QUESTIONS BY MR. LANIER:

20 Q. I don't need ask you this one
21 because we've covered it with our own
22 drawing, although I did a better drawing for
23 him, didn't I?

24 Let's just work through it.

25 A closed system of

1 distribution, that's what we called a loop,
2 right?

3 Agreed?

4 A. Yes.

5 Q. And it accounts for the drugs
6 from the manufacturing to the patient, agree?

7 A. Yes.

8 Q. And this system, it's for the
9 legal obligation to secure, keep records and
10 control against diversion, agree?

11 A. Yes.

12 MS. SWIFT: Object to form.

13 QUESTIONS BY MR. LANIER:

14 Q. Manufacturers, they make money
15 off the manufacturing and selling of the
16 pills, generally, true?

17 MR. EPPICH: Objection.

18 Foundation.

19 MS. MCCLURE: Form.

20 Foundation.

21 QUESTIONS BY MR. LANIER:

22 Q. Let me ask it this way, and I
23 don't think that's the way I asked

24 Mr. Rannazzisi.

25 Manufacturers manufacture pills

1 and sell them, general course of business,
2 right?

3 I'm not saying they don't give
4 samples. I'm not saying they don't, you
5 know, have some that they may put under
6 various programs, but they manufacture pills,
7 fair?

8 A. Yeah, various dosage forms.

9 Q. And the distributors are the
10 middleman who send out the money -- or take
11 orders and get paid as a bridge, agreed?

12 MR. EPPICH: Objection. Form.

13 QUESTIONS BY MR. LANIER:

14 Q. Between the manufacturers and
15 retailers?

16 MR. EPPICH: Object to the
17 form.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. LANIER:

20 Q. Would you agree that they are a
21 key component to this registration system?

22 MR. EPPICH: Object to form.

23 THE WITNESS: Yes.

24 QUESTIONS BY MR. LANIER:

25 Q. Would you agree that they must

1 be vigilant, and by that include due
2 diligence, knowing their customers and
3 looking at suspicious orders, agreed?

4 MR. EPPICH: Objection. Form.
5 Vague.

6 MS. SWIFT: Objection. Legal
7 conclusion.

8 MR. EPPICH: Calls for a legal
9 conclusion.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. LANIER:

12 Q. And would you agree that this
13 is critical to stop diversion?

14 MR. EPPICH: Object to the
15 form.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. LANIER:

18 Q. And I've asked you if you know
19 whether or not the more they sell, the more
20 money they make.

21 You assume that to be true, but
22 you don't know firsthand, fair?

23 A. That's correct.

24 Q. All right. We'll leave that
25 unmarked.

1 Now, in 2005, Joe Rannazzisi
2 says he sat down with the distributors, he
3 explained the law as he interpreted it and
4 what was expected.

5 Were you in on that meeting?

6 MS. WICHT: Objection.

7 Foundation.

8 MS. MCCLURE: Objection to the
9 extent it mischaracterizes what
10 Mr. Rannazzisi testified to.

11 THE WITNESS: I don't know
12 which meeting he may have been
13 referring to.

14 QUESTIONS BY MR. LANIER:

15 Q. Okay. So don't know if you
16 were there.

17 Did you know that those
18 meetings took place?

19 MS. MCCLURE: Continuing
20 objection. Same.

21 THE WITNESS: The meetings I'm
22 aware of were the Distributor
23 Initiative meetings that we've talked
24 about already, and he was at, I
25 believe, one of those.

1 QUESTIONS BY MR. LANIER:

2 Q. So you know -- whoops. You
3 know about those meetings with the
4 distributors where you were involved
5 explaining the law?

6 A. Yes.

7 Q. Okay. And then in 2006 and
8 2007, he sent letters telling them to
9 remember their responsibilities.

10 Did you know about that?

11 A. Yes.

12 MS. MCCLURE: Form.

13 Mischaracterizes the document.

14 QUESTIONS BY MR. LANIER:

15 Q. And then he testified the
16 companies, at least several companies, didn't
17 do what they were directed to do. They
18 didn't comply.

19 You know that to be true, at
20 least for the McKesson story -- I mean, the
21 AmerisourceBergen story we were talking about
22 before, right?

23 MS. MCCLURE: Objection. Form.

24 Foundation. Mischaracterizes the
25 witness' testimony.

1 THE WITNESS: Yeah, I know
2 there were continuing issues.

3 QUESTIONS BY MR. LANIER:

4 Q. Well, not just continuing
5 issues, continuing violations based upon your
6 interpretation?

7 MS. MCCLURE: All the same
8 objections plus asked and answered.
9 Argumentative.

10 QUESTIONS BY MR. LANIER:

11 Q. And by "your" I mean you,
12 individually, not the DEA.

13 MS. MCCLURE: All the same.

14 MR. BENNETT: Objection.
15 Scope.

16 You may answer that question
17 yes or no only.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. LANIER:

20 Q. Okay. And the company changed
21 the law. They lobbied hard to get a bill
22 passed that changed the ability of the DEA to
23 control distributors, didn't they?

24 MS. MCCLURE: Form.

25 Foundation. Compound. Misstates the

1 record. Vague.

2 THE WITNESS: There was a
3 change in the law, yes.

4 QUESTIONS BY MR. LANIER:

5 Q. We'll look at how much the
6 company spent to lobby for that in a little
7 bit, if we have time.

8 And diversion causes overdose
9 and deaths, 16,000 in 2014 to 2015. That's
10 consistent with what you knew as well, right?

11 MR. EPPICH: Objection.

12 Foundation.

13 THE WITNESS: No, I don't know
14 what the numbers are. I wasn't with
15 DEA at that point and don't know.

16 QUESTIONS BY MR. LANIER:

17 Q. Okay. Now, "if the companies
18 are asserting a roadblock," I asked
19 Mr. Rannazzisi in his deposition, "that the
20 DEA was part of the problem, that you didn't
21 do your job right or that Joe Ran didn't do
22 his job right or the others," Joe Ran
23 disagreed and said the DEA tried to stop
24 diversion and to clean up the supply chain.

25 Do you think that the DEA was

1 the problem?

2 MS. MCCLURE: Form.

3 MR. EPPICH: Objection. Form.

4 Misstates the testimony.

5 MR. BENNETT: Objection.

6 Scope. This is not a 30(b)(6) witness
7 here to testify on behalf of DEA.

8 If you have a personal opinion
9 based on your personal experiences,
10 you may answer the question.

11 THE WITNESS: I believe the DEA
12 worked within the resources they had
13 to address the problem.

14 QUESTIONS BY MR. LANIER:

15 Q. Uh-huh.

16 Would you agree that if the
17 companies stopped diversions, the DEA's never
18 even going to be an issue?

19 If the companies truly did what
20 the law told them to do, the DEA's not a
21 problem on this, right?

22 MS. MCCLURE: Form.

23 Speculation. Foundation. Calls for a
24 legal conclusion and scope.

25 MS. WICHT: Incomplete

1 hypothetical.

2 MR. BENNETT: Same instruction.

3 THE WITNESS: I believe that
4 DEA would always have to be there to
5 provide oversight, so it would
6 continue.

7 QUESTIONS BY MR. LANIER:

8 Q. Right. To make sure the
9 oversight is there.

10 But if the companies have
11 stopped diversion, oversight is pretty
12 simple, right?

13 MS. MCCLURE: All the same
14 objections. Leading.

15 THE WITNESS: Yes.

16 QUESTIONS BY MR. LANIER:

17 Q. And then if there's an argument
18 that the distributors, the manufacturers,
19 pharmacies, they were just confused, you know
20 from your work that those companies have
21 lawyers that are inside the company and
22 lawyers that they hire outside the companies,
23 right?

24 MS. SWIFT: Objection.
25 Leading.

1 THE WITNESS: That's correct.

2 QUESTIONS BY MR. LANIER:

3 Q. And the DEA hasn't and doesn't
4 give legal counsel, true?

5 MS. MCCLURE: Form.

6 MR. EPPICH: Objection.

7 Misstates testimony.

8 MS. MCCLURE: Foundation.

9 Misstates the testimony and the
10 record.

11 THE WITNESS: That's correct.

12 QUESTIONS BY MR. LANIER:

13 Q. And some companies, you know
14 for a fact, hired former employees from the
15 DEA so they had that resource available as
16 well, true?

17 MS. MCCLURE: Foundation.

18 THE WITNESS: True.

19 QUESTIONS BY MR. LANIER:

20 Q. And if a company is confused,
21 they can always stop selling until they get
22 their questions answered, can't they?

23 MS. MCCLURE: Leading.

24 MS. WICHT: Foundation.

25 THE WITNESS: Yes, they could.

1 MR. LANIER: All right. That
2 ends our second stop on the road.
3 We're ready to go to the third stop.

4 If we could take a break for
5 about five minutes and I'll clean up
6 this mess.

7 VIDEOGRAPHER: Going off
8 record. The time is 10:12.

9 (Off the record at 10:12 a.m.)

10 VIDEOGRAPHER: We're going back
11 on record. Beginning of Media File 4.
12 The time is 10:23.

13 QUESTIONS BY MR. LANIER:

14 Q. Mr. Mapes, on the road that we
15 were doing, we've done your personal
16 background, we've done your work for your
17 DEA.

18 Now I want to talk to you about
19 some of the industry issues that arose when
20 you were with industry and some of the
21 questions that industry asked you today.

22 And as a reminder, you still do
23 work for industry today, right?

24 MS. MCCLURE: Form.

25 THE WITNESS: In what form?

1 QUESTIONS BY MR. LANIER:

2 Q. Well, you're a consultant to
3 one of the parties in this litigation, to
4 Cardinal, correct?

5 A. Yes.

6 Q. And I assume you're still --
7 your services are still out there to hire if
8 they need help on some DEA issue, fair?

9 A. No.

10 Q. You don't do that anymore?

11 A. No.

12 Q. So now your consulting is
13 limited to the legal arena for these
14 companies?

15 A. To this one instance, yes.

16 Q. All right. Now, in that
17 regard, sir, let's talk then about your
18 industry work and let's stop there on our
19 road.

20 Okay?

21 A. Okay.

22 Q. I want to begin with a question
23 from the AmerisourceBergen lawyer.

24 Now, the AmerisourceBergen
25 lawyer told you that the DEA had approved

1 their suspicious order monitoring system at
2 one point in time.

3 You were surprised by that,
4 remember?

5 MS. MCCLURE: Objection to the
6 narrative. Objection to misstates the
7 record. Form.

8 THE WITNESS: No, I don't
9 believe I was surprised by that.

10 QUESTIONS BY MR. LANIER:

11 Q. Okay. Then I may have
12 misunderstood you yesterday.

13 In regard to Exhibit Number 5,
14 going back to 1998 where the DEA said that
15 they would grant approval of the request to
16 implement on a nationwide basis the newly
17 developed system to identify and report
18 suspicious orders for controlled substances,
19 you already knew about that before yesterday?

20 MS. MCCLURE: Form.

21 THE WITNESS: What year was
22 this?

23 QUESTIONS BY MR. LANIER:

24 Q. 1998.

25 A. I don't believe I had seen that

1 particular memo before yesterday.

2 Q. Okay. Well, then that's what I
3 was saying. You did not know before
4 yesterday about this -- it was Exhibit 4.
5 I'll give you another copy of Exhibit 4 from
6 yesterday.

7 Exhibit 4 is this 1998 approval
8 of the request to implement nationwide a
9 newly developed system to identify and report
10 suspicious orders.

11 Do you see that?

12 A. Yes.

13 Q. Now, you say today that you
14 knew about this; you'd just not seen it?

15 A. I had not seen it before
16 yesterday.

17 Q. Okay. But yesterday it was set
18 forward before you as the method of providing
19 information being approved or the entire
20 monitoring system being approved?

21 MS. MCCLURE: Form.

22 QUESTIONS BY MR. LANIER:

23 Q. Which was it?

24 A. This appears to me to approve
25 the system to identify and report suspicious

1 orders, so that would be their entire system.

2 Q. Okay. So in that regard, look
3 at -- let's do it this way.

4 Did you ever look at the
5 system?

6 MS. MCCLURE: Form. Vague.

7 THE WITNESS: Did I look at --

8 QUESTIONS BY MR. LANIER:

9 Q. Yeah.

10 A. -- which system and --

11 Q. At what was approved?

12 A. -- at what point in time?

13 Q. Have you looked at the system
14 that was approved that she was talking about?

15 MS. MCCLURE: Form. Vague.

16 THE WITNESS: No.

17 QUESTIONS BY MR. LANIER:

18 Q. By the way, all of this was
19 dealing with methamphetamines, not opioids,
20 right?

21 MS. MCCLURE: Form. Misstates
22 the document. Foundation. Leading.

23 QUESTIONS BY MR. LANIER:

24 Q. Same law, same requirements to
25 deal with it, but these were all dealing with

1 methamphetamines back then, weren't they?

2 MS. MCCLURE: All the same
3 objections.

4 THE WITNESS: I believe they
5 were dealing with both, the chemicals,
6 the listed chemicals, and controlled
7 substances.

8 QUESTIONS BY MR. LANIER:

9 Q. If you'll look on the page
10 that's marked -- it's one of the overhead
11 letters, December 30, 1997. It's about three
12 or four pages in. It's got down in the lower
13 right-hand corner the number 350.

14 Do you see that?

15 A. Yes.

16 Q. It talks about how the
17 Methamphetamine Control Act requires
18 distributors to report suspicious orders of
19 listed chemicals to the DEA.

20 MS. MCCLURE: So I note that
21 the Exhibit 4 that you've just handed
22 out does have a different set of Bates
23 numbers applied to it, so the
24 reference to 350 that you read out for
25 the December 30th letter actually, in

1 this copy that you just handed to the
2 witness, ends in 786.

3 MR. LANIER: Okay. Thank you
4 for helping us do that.

5 QUESTIONS BY MR. LANIER:

6 Q. So she wants you to look at
7 page 786 instead of 9350. It's been produced
8 in multiple ways. Same document, though.

9 So Exhibit 4, page 786 in the
10 corner --

11 MS. MCCLURE: So we should
12 designate --

13 QUESTIONS BY MR. LANIER:

14 Q. -- is talking about the
15 Methamphetamine Control Act?

16 Do you see that?

17 MS. MCCLURE: So two things.
18 We should designate this document
19 you've handed the witness as 4A in
20 light of the fact that it is, in fact,
21 a different Bates numbers set.

22 And I continue to maintain all
23 of the same previously articulated
24 objections to your characterization of
25 the document.

1 (Mapes Exhibit 4A marked for
2 identification.)

3 QUESTIONS BY MR. LANIER:

4 Q. Do you see that, sir?

5 A. I do.

6 Q. This is talking about the need
7 to report suspicious orders of ephedrine and
8 pseudoephedrine.

9 Do you see that?

10 MS. MCCLURE: Continuing
11 objection to the use of the document
12 and the witness' testimony and...

13 QUESTIONS BY MR. LANIER:

14 Q. Do you see that, sir?

15 A. I do.

16 Q. That's Sudafed. The concern
17 was people taking Sudafed and buying large
18 amounts of it and using it to manufacture
19 crack; is that right?

20 A. No.

21 MS. MCCLURE: Continuing
22 objection.

23 QUESTIONS BY MR. LANIER:

24 Q. What was the concern?

25 A. They were using it to

1 manufacture methamphetamine.

2 Q. Crack's not methamphetamine?

3 A. No.

4 Q. Okay. I grew up in Lubbock.

5 We didn't know this stuff.

6 But they make drugs off of it.

7 They make illegal drugs, right?

8 A. Yes.

9 Q. Speed?

10 A. Yes.

11 Q. It's not opioids, is it?

12 A. No, it's not.

13 MS. MCCLURE: Form.

14 QUESTIONS BY MR. LANIER:

15 Q. Methamphetamine Control Act
16 doesn't apply to opioids, does?

17 MS. MCCLURE: Form. Calls for
18 a legal conclusion.

19 THE WITNESS: It does not.

20 QUESTIONS BY MR. LANIER:

21 Q. Okay. But just aside from the
22 fact that she gave you a methamphetamine --
23 deal -- the bottom line is, if you look at
24 it, the plan that was approved says that
25 they're going to hold shipping while

1 contacting and reporting it to the DEA.

2 Did she tell you that?

3 MS. MCCLURE: Form.

4 Mischaracterizes the document.

5 Continuing objection to all of the
6 previous ones I had identified.

7 THE WITNESS: I don't remember
8 specifically what she said yesterday.
9 There were a lot of questions.

10 QUESTIONS BY MR. LANIER:

11 Q. Well, she never gave you the
12 actual -- never gave it to you, never gave it
13 to the jury, the actual suspicious order
14 monitoring system she says was approved.

15 She never gave it to you, did
16 she?

17 MS. MCCLURE: Form.

18 THE WITNESS: That's correct.

19 (Mapes Exhibit 31 marked for
20 identification.)

21 QUESTIONS BY MR. LANIER:

22 Q. Well, let me give it to you.
23 We'll mark it as Exhibit Number 31.
24 Exhibit 31, suspicious order policy and
25 procedure for Bergen.

1 This is before they got bought
2 out by Amerisource.

3 Do you see that?

4 A. I see that.

5 Q. The old company, before they
6 got bought out by Amerisource, knew what is a
7 suspicious order. They're able to cite the
8 regulation on that, aren't they?

9 MS. MCCLURE: Form. Leading.

10 QUESTIONS BY MR. LANIER:

11 Q. Do you see that?

12 A. I see that.

13 Q. And they talk about they knew
14 what the division manager's responsibility
15 was, that they had to "design and operate a
16 system to disclose to the registrant
17 suspicious orders of controlled substances."

18 They knew that, didn't they?

19 A. It's included in the memo.

20 Q. But if you go to the last page,
21 you'll see some things at the very end, the
22 very last thing they have to say about it.

23 "It is imperative each division
24 manager understand these computer reports do
25 not relieve them of their responsibility to

1 report suspicious orders, especially large
2 single orders. Remember, the reports contain
3 information on actual sales only and do not
4 necessarily reflect actual orders."

5 Do you see where I'm reading?

6 A. I do.

7 Q. Talks about the different
8 formats, but then it says, "If these
9 customers' orders fit the suspicious order
10 criteria explained above" --

11 You tracking with me?

12 A. Yes.

13 Q. -- "you must contact DEA to
14 report the order before actually shipping the
15 merchandise. This must be done even if you
16 decide to cut the order back for business
17 reasons. Again, in this case, it is the
18 order that is suspicious, not the actual
19 shipment."

20 Did you see that?

21 A. Yes, I see that.

22 Q. In other words, don't ship it
23 until you report it to the FDA {sic}?

24 MS. MCCLURE: Form.

25

1 QUESTIONS BY MR. LANIER:

2 Q. That was in the program, wasn't
3 it?

4 A. To DEA.

5 Q. To DEA, I apologize. Let me
6 ask it again.

7 In other words, don't ship it
8 until you report it to the DEA?

9 MS. MCCLURE: Form.

10 THE WITNESS: That's correct.

11 QUESTIONS BY MR. LANIER:

12 Q. Well, that's not what the
13 company was doing once they'd been bought out
14 by Amerisource, is it?

15 MS. MCCLURE: Form. Calls
16 for -- foundation.

17 QUESTIONS BY MR. LANIER:

18 Q. Go ahead and answer.

19 A. They were not doing that.

20 Q. Yeah.

21 So they even quit the policy
22 that they had claimed to have gotten approved
23 for on the methamphetamine front, right?

24 MS. MCCLURE: Form.

25 Foundation.

1 THE WITNESS: I don't know if
2 they quit the policy, there were
3 lapses or what, but, yeah, there were
4 instances where it wasn't followed.

5 QUESTIONS BY MR. LANIER:

6 Q. Yeah.

7 Okay. Now I want to ask you
8 some specific questions from the industries.

9 Walmart asked you a bunch of
10 questions. Put Walmart up here.

11 The Walmart lawyer, you
12 remember him?

13 A. Yes.

14 Q. And the Walmart lawyer got here
15 and sat in this very chair and said, quote,
16 "Do you agree that good leaders hold
17 themselves accountable for the decisions they
18 make?"

19 Do you remember him asking you
20 that?

21 A. Yes.

22 Q. Well, I got a question.

23 If that's true for good leaders
24 inside the DEA and other places, that sure
25 ought to be true for Walmart, shouldn't it?

1 A. Yes.

2 Q. In other words, Walmart, if
3 they're good leaders in Walmart, they ought
4 to hold themselves accountable for the
5 decisions they're making, fair?

6 A. Fair.

7 Q. Then he asked you this: "Do
8 you agree the American public" -- and I've
9 written this out word for word, but it's
10 really a complicated question. I had trouble
11 understanding it, so I want to read it
12 carefully. I want you to read it with me. I
13 want the jury to be able to read it.

14 He said to you: "Do you agree
15 the American public has a right to expect
16 that the leaders of our law enforcement
17 agencies will lead their teams in a fashion
18 consistent with the standards?"

19 Remember that?

20 A. Generally, yes.

21 Q. And you generally agreed with
22 it, right?

23 A. Yeah.

24 Q. Well, do you agree the American
25 has a public -- has a right to expect that

1 the leaders of huge companies like Walmart
2 will lead their teams to follow the law and
3 not try to get away with actions that
4 endanger our communities and people?

5 A. Yes.

6 Q. I mean, company CEOs shouldn't
7 expect special treatment when it comes to
8 breaking the law, right?

9 A. That's right.

10 Q. Ignorance of law is no excuse,
11 right?

12 A. Right.

13 Q. Then he asked you this: "Would
14 you agree that drug traffickers and diverters
15 are the ones who potentially benefit if the
16 DEA decides to isolate itself from
17 individuals who help advance the DEA's
18 diversion investigations who are outside of
19 DEA?"

20 Again, I had to read that like
21 three or four times to understand it, but do
22 you understand that question?

23 A. I'm reading it again right now.

24 Q. I think what he was saying in
25 everyday language is, if someone's not doing

1 their job right, the drug traffickers and the
2 diverters can potentially benefit. That's
3 from the Walmart guy.

4 Right?

5 MR. STEPHENS: Object to form.

6 THE WITNESS: That is what I
7 think he's saying, yes.

8 QUESTIONS BY MR. LANIER:

9 Q. All right. Well, let's just be
10 real clear.

11 The drug traffickers here,
12 they're the people who are selling the
13 opioids, aren't they?

14 MR. STEPHENS: Object to form.

15 QUESTIONS BY MR. LANIER:

16 Q. Drug traffickers, they traffic,
17 they sell opioids, right?

18 MR. STEPHENS: Object to form.

19 THE WITNESS: In my mind,
20 traffickers are the ones that would
21 illegally sell as opposed to
22 legitimately sell.

23 QUESTIONS BY MR. LANIER:

24 Q. No fuss about that either.

25 Because if a distributor, even

1 if it's a legal company instead of some
2 fellow on the street, if that distributor is
3 not following the law, they're selling the
4 drugs illegally, aren't they?

5 A. They could be, yes.

6 Q. And so the traffickers, the
7 ones selling it illegally, and the diverters,
8 they're the ones who potentially benefit if
9 they can get away with it.

10 That's what this means, in
11 effect, isn't it?

12 MR. STEPHENS: Object to form.

13 THE WITNESS: It could mean
14 that, yes.

15 QUESTIONS BY MR. LANIER:

16 Q. Yeah. If we go back to our
17 little model, if we assume that the drug
18 companies -- if we can assume that these
19 distributors are for profit, they're going to
20 buy from the manufacturer and get it at a
21 wholesale cost, or get it at a cost that they
22 can then wholesale it to the pharmacies,
23 right?

24 MR. EPPICH: Objection.

25 Foundation.

1 QUESTIONS BY MR. LANIER:

2 Q. Now, there's a bunch of folks
3 that actually hit both of these columns. By
4 that I mean they're distributors and
5 pharmacies. They get to make the money from
6 both ends of that, aren't there?

7 MS. SWIFT: Objection.

8 Leading. Mischaracterizes the
9 evidence.

10 THE WITNESS: There are people
11 who are registered both as
12 distributors and pharmacies, yes.

13 QUESTIONS BY MR. LANIER:

14 Q. People like Walmart?

15 A. Yes.

16 Q. Walgreens? CVS?

17 A. CVS, yes. Walgreens, I'm not
18 sure.

19 Q. Okay. I mean, they're the ones
20 who profit. They make money off these sales,
21 don't they?

22 MR. STEPHENS: Object to form.

23 THE WITNESS: Again, I never
24 have been involved in the financial
25 end of things so don't really...

1 QUESTIONS BY MR. LANIER:

2 Q. All right. Here's another one
3 from the Walmart lawyer. He said: "You're
4 not aware of any deadline that the DEA set
5 that changed this practice related to the
6 shipping of suspicious orders."

7 Do you remember that?

8 A. Yes.

9 Q. I mean, come on, you give them
10 the 1943 decision from the Supreme Court,
11 right?

12 MR. STEPHENS: Object to form.
13 Foundation.

14 QUESTIONS BY MR. LANIER:

15 Q. The law -- right? You gave it
16 to them, right?

17 MR. STEPHENS: Objection.

18 THE WITNESS: Gave that to
19 whom, Walmart?

20 QUESTIONS BY MR. LANIER:

21 Q. Well, you gave it to different
22 distributors, but, I mean, it's -- Walmart's
23 lawyers, their in-house legal team, that
24 is -- they've got, like, lots of lawyers on
25 it.

1 They have access to the Supreme
2 Court just as well as you, don't they?

3 A. I'm sure they do.

4 Q. Okay. So you have your 1943
5 decision, but the law itself, that was from
6 the 1970s, wasn't it?

7 A. Yes.

8 Q. And did the DEA ever tell the
9 companies, "Oh, go ahead, just ship those
10 suspicious orders. It's following the law
11 when you ship a suspicious order. You don't
12 need to do due diligence. You don't need to
13 check into it. You don't -- yeah, it's
14 excessive, yeah, it's suspicious, yeah, it's
15 probably going to be diverted, but just ship
16 it anyway and make the money"?

17 Did y'all ever tell them to do
18 that?

19 A. I never did.

20 MS. WICHT: Object to form.

21 QUESTIONS BY MR. LANIER:

22 Q. Do you know anyone who ever
23 did?

24 MR. EPPICH: Object to form.

25 MS. WICHT: Object to form.

1 QUESTIONS BY MR. LANIER:

2 Q. At the DEA?

3 A. No, I don't.

4 Q. That's the company's decision
5 whether or not they want to understand the
6 law and follow the law, right?

7 MS. MCCLURE: Form. Calls for
8 a legal conclusion.

9 THE WITNESS: Yes.

10 QUESTIONS BY MR. LANIER:

11 Q. It's the company's decision
12 whether or not they want to ship a suspicious
13 order or hold it, isn't it?

14 A. It is.

15 Q. And your answers about Walmart
16 apply to any of the other companies that that
17 Walmart lawyer said he was asking questions
18 on behalf of that were in the same or similar
19 shoes, fair?

20 MR. STEPHENS: Object to form.

21 MR. EPPICH: Object to form.

22 Vague.

23 THE WITNESS: Yes.

24 QUESTIONS BY MR. LANIER:

25 Q. Now, the Walmart lawyer asked

1 you some other things. He said -- I couldn't
2 follow this. It sounded to me like the
3 Walmart lawyer is blaming the DEA for not
4 disclosing who their informants and their
5 sources are for diversion problems.

6 MR. STEPHENS: Object to form.

7 QUESTIONS BY MR. LANIER:

8 Q. Did you remember those
9 questions?

10 A. The general line of questions,
11 yes.

12 Q. Yeah.

13 I mean, is the DEA supposed to
14 be telling people, "Oh, here are our
15 informants, and here's how we figured out
16 who's breaking the law and who's not"?

17 MR. STEPHENS: Object to form.

18 QUESTIONS BY MR. LANIER:

19 Q. I mean, y'all aren't supposed
20 to tell that to the companies that you're
21 investigating, are you?

22 A. No.

23 Q. And the fact that you're not
24 telling Walmart about how you figured out
25 AmerisourceBergen may or may not be breaking

1 the law, that doesn't excuse Walmart for
2 breaking the law, does it?

3 MR. STEPHENS: Object to form.
4 Foundation.

5 THE WITNESS: No, it does not.

6 QUESTIONS BY MR. LANIER:

7 Q. And then he says, "The DEA can
8 get a search warrant."

9 Remember that question?

10 A. I do.

11 Q. Well, Walmart doesn't need a
12 search warrant to look in its own closet,
13 does it?

14 MR. STEPHENS: Object to form.

15 THE WITNESS: No.

16 QUESTIONS BY MR. LANIER:

17 Q. I mean, if you want to go look
18 into the bowels of Walmart's records and what
19 they're doing and their due diligence and
20 all, you may need to get a search warrant if
21 you're working for the DEA, but Walmart
22 doesn't need a search warrant to go
23 investigate their own processes and
24 procedures, do they?

25 A. No.

1 Q. I mean, this whole idea of the
2 DEA's -- can get a search warrant when
3 Walmart can't, Walmart doesn't need that
4 search warrant to look at their own records,
5 fair?

6 A. That's fair.

7 Q. And by the same token, does
8 Walmart need a grand jury before they can
9 figure out if Walmart is diverting or selling
10 to bad pharmacies?

11 A. I don't believe so.

12 Q. Does Walmart need a grand jury
13 before they figure out whether or not they're
14 selling on bad prescriptions that are
15 obviously suspicious on their face?

16 MR. STEPHENS: Object to form.

17 MS. MCCLURE: Object to form.

18 MR. EPPICH: Scope.

19 THE WITNESS: No.

20 QUESTIONS BY MR. LANIER:

21 Q. Does Walmart need a subpoena to
22 see what information Walmart has?

23 A. No.

24 Q. Does Walmart need the FBI to
25 see what information Walmart has?

1 A. No.

2 Q. And then the Walmart lawyer
3 said, "Yeah, the DEA has lots of tools for
4 fighting diversion."

5 Remember that?

6 A. Yes.

7 Q. Walmart can see in realtime an
8 excessive flood of pills going out. That's
9 an ability they've got the DEA doesn't have
10 realtime, true?

11 MR. STEPHENS: Object to form.

12 THE WITNESS: I don't really
13 know all the capabilities of their
14 system, so it would be a guess.

15 QUESTIONS BY MR. LANIER:

16 Q. Well, if they're going out
17 through their pharmacies, they got a
18 pharmacist who's selling them. I mean, it's
19 happening at their store in realtime.

20 They can see that, fair?

21 MR. STEPHENS: Object to form.
22 Scope.

23 THE WITNESS: They should be
24 able to see that, yes.

25

1 QUESTIONS BY MR. LANIER:

2 Q. That's a valuable tool, isn't
3 it?

4 A. Yes.

5 Q. Next. He said: "The DEA can
6 use undercover folks."

7 Remember that?

8 A. Yes.

9 Q. Well, Walmart can, too, can't
10 they?

11 Look, have you ever seen those
12 mystery shoppers, where they dress people up
13 and just have them pretend they're someone
14 else in the store?

15 A. Yes.

16 Q. I mean, they can put people in
17 the store that don't have "Greetings, I'm
18 from Walmart" on their clothes to watch the
19 people who are coming in to peddle or buy
20 these things, can't they?

21 A. They could.

22 MR. STEPHENS: Object to form.

23 QUESTIONS BY MR. LANIER:

24 Q. Everybody who works at Walmart
25 doesn't have to have the Walmart greeter blue

1 on, do they?

2 A. No.

3 Q. And then he asked you these
4 questions about the DEA being able to use
5 hidden room bugs.

6 Remember that?

7 A. I do.

8 Q. Heck, Walmart sells hidden room
9 bugs.

10 Did you know that?

11 A. I did not.

12 Q. Did you know that they hide
13 cameras all over their stores?

14 MR. STEPHENS: Object to form.

15 THE WITNESS: I assume they do.

16 QUESTIONS BY MR. LANIER:

17 Q. They hide the cameras inside
18 the stores and they got cameras outside their
19 stores; did you know that?

20 MR. STEPHENS: Object to form.

21 THE WITNESS: I've seen cameras
22 outside.

23 QUESTIONS BY MR. LANIER:

24 Q. They've got security guys
25 driving around in the parking lots of some of

1 their stores; did you know that?

2 A. Yes.

3 Q. Did you know that Walmart has
4 security forces that have trained people how
5 to pick up and stop shoplifters?

6 A. Yes.

7 Q. In other words, if someone is
8 going to get something from Walmart illegally
9 that's going to affect Walmart's bottom line,
10 they've got an entire force set up that
11 trains people to stop that.

12 MR. STEPHENS: Object to form.

13 QUESTIONS BY MR. LANIER:

14 Q. But have you ever seen Walmart
15 have an entire force --

16 MR. STEPHENS: Scope.

17 QUESTIONS BY MR. LANIER:

18 Q. -- set up how to train people
19 how to find suspicious orders from the people
20 who are coming in with the prescriptions and
21 buying the pills in their stores?

22 MR. STEPHENS: Object to form.

23 Scope.

24 THE WITNESS: I have never had
25 discussions with Walmart about their

1 suspicious order procedures and their
2 training and those kind of things.

3 QUESTIONS BY MR. LANIER:

4 Q. All right. Next. The Walmart
5 lawyer asked you questions about whether Joe
6 Rannazzisi or the DEA shared the ARCOS data
7 with companies, right?

8 A. Yes.

9 Q. Now, let's flesh out ARCOS data
10 for just a moment.

11 ARCOS data, that is this --
12 each company, each registrant, is required to
13 turn in data to the DEA about drugs that
14 they're selling. Opioids is what we're
15 concerned about here, opioids they're
16 selling, right?

17 A. That's correct.

18 Q. And each company has their own
19 data, right?

20 A. Yes, they do.

21 Q. But one company doesn't have
22 the data of another company, right?

23 A. That's correct.

24 Q. So Walmart can't see who CVS is
25 selling their drugs to and who's writing

1 their prescriptions, right?

2 CVS's data is in a silo for CVS
3 that they can know, but Walmart doesn't get
4 that competitive edge of knowing what CVS is
5 doing, fair?

6 A. That's correct, except that it
7 doesn't get to the level of prescription
8 data. It's wholesalers selling to retail
9 pharmacies.

10 Q. Still they --

11 A. Manufacturers to wholesalers.

12 Q. That's fine.

13 They don't know, gee, that
14 store is selling more opioids than this
15 store. Maybe we need to put something in
16 that location so we can get on that
17 prescription gravy train.

18 That type of information is a
19 competitive edge if one company gets it on
20 another, fair?

21 MR. STEPHENS: Object to form.

22 THE WITNESS: It could be.

23 QUESTIONS BY MR. LANIER:

24 Q. And so the companies
25 themselves, they won't agree to share in the

1 data, at least based upon your experience --

2 A. I am --

3 Q. -- inside the DEA and out,
4 right?

5 A. I have not seen them agree to
6 share it.

7 Q. All right. Never seen them --
8 see.

9 I mean, if the lawyer for
10 Walmart wants to make a big deal out of this,
11 then Walmart could easily give its ARCOS data
12 to CVS if he thought it was an important
13 thing to do, couldn't they?

14 MR. STEPHENS: Object to form.

15 THE WITNESS: They could.

16 QUESTIONS BY MR. LANIER:

17 Q. I mean, if Walmart thought it
18 was going to help this opioid crisis by
19 sharing its own sales data with its
20 competitors, there's nothing the DEA, the
21 DOJ, the FBI, the CIA, the US Constitution,
22 the Magna Carta, there's nothing The Ten
23 Commandments would do to stop that, right?

24 A. Not that I'm aware of.

25 MR. EPPICH: Objection.

1 MS. MCCLURE: Objection.

2 Foundation. Form.

3 MR. EPPICH: Calls for a legal
4 conclusion.

5 QUESTIONS BY MR. LANIER:

6 Q. Did you know the DOJ won't
7 agree to share the ARCOS data from one
8 company to another?

9 MR. BENNETT: And I'm going to
10 interject an objection to the last
11 question. Scope. He doesn't speak on
12 behalf of Department of Justice or
13 DEA.

14 MR. LANIER: True.

15 MR. BENNETT: I'll also
16 interject an objection to this
17 question for the same reasons.

18 If you have an opinion in your
19 personal capacity, you may answer.

20 MR. LANIER: And that's what
21 I'm asking, thank you, your opinion in
22 a personal capacity based on your
23 experience.

24 QUESTIONS BY MR LANIER:

25 Q. You haven't seen the DOJ just

1 open up pell-mell this data to everybody,
2 have you, the Department of Justice?

3 A. I understand that there may be
4 some type of way to share a limited subset of
5 the data, but I don't know the details of
6 that.

7 Q. Yeah.

8 It's not easy to get, but each
9 company's got their own data; that's the
10 bottom line, right?

11 A. Yes.

12 Q. And the enforcement that the
13 DEA did when you've seen it from the outside
14 or when you were there based on your personal
15 experience -- not secret data. I don't want
16 to go behind the curtain of how y'all did
17 stuff, and I don't want you speaking for the
18 DEA. Just what you know from your personal
19 knowledge and public information.

20 We know publicly enforcement
21 always comes from a company's own data --

22 MS. MCCLURE: Form. Misstates.

23 QUESTIONS BY MR. LANIER:

24 Q. -- true?

25 MR. STEPHENS: Object to form.

1 THE WITNESS: As well as other
2 sources.

3 QUESTIONS BY MR. LANIER:

4 Q. Right.

5 But you use the company's ARCOS
6 data in McKesson -- let me write that down,
7 "with other sources."

8 But for McKesson, for
9 example -- or, no, AmerisourceBergen. When
10 y'all held AmerisourceBergen responsible for
11 selling wrong through one of their
12 facilities --

13 You and I looked at that
14 earlier, remember?

15 A. Yes.

16 Q. -- that was based on their
17 ARCOS data --

18 A. It was.

19 Q. -- their own data.

20 Okay. And then the lawyer from
21 Walmart asked you, he said: "Rogue Internet
22 pharmacies, those were the greatest threat of
23 diversion."

24 Remember that?

25 A. Yes.

1 Q. Well, those rogue Internet
2 pharmacies, weren't they basically shut down
3 by around 2009?

4 A. Generally, yes.

5 Q. So if the problem continued
6 past there, the problem can't just be rogue
7 Internet pharmacies. That's simple logic,
8 right?

9 MR. STEPHENS: Object to form.
10 Misstates the testimony.

11 MS. MCCLURE: Form.

12 THE WITNESS: That's correct.

13 QUESTIONS BY MR. LANIER:

14 Q. So I gave you that chart
15 earlier. 2009's right here. It's not like
16 once y'all shut down the rogue Internet
17 pharmacies they didn't continue to be a
18 problem.

19 See what I'm talking about?

20 MS. SWIFT: Object to form.

21 MS. MCCLURE: Form.

22 MR. EPPICH: Object to the use
23 of this document.

24 THE WITNESS: Yes, I see what
25 you're talking about.

1 QUESTIONS BY MR. LANIER:

2 Q. Okay. And again, your answers
3 on these Walmart questions would apply
4 equally to the other folks he was asking
5 questions on behalf of.

6 CVS, they've got their own
7 data, right?

8 A. Yes.

9 Q. Walgreens has got their own
10 data, right?

11 A. Yes.

12 Q. Now, the McKesson lawyer asked
13 you some questions.

14 Do you remember those?

15 A. Not specifically, but...

16 Q. All right. Let's look at some
17 of them.

18 First of all, the McKesson
19 lawyer asked you about the requirement of
20 Section 1301.74(a), and he said: "It's only
21 to see if a customer is registered."

22 Do you remember that?

23 MR. EPPICH: Object to form.

24 Objection to the extent it misstates
25 the question.

1 QUESTIONS BY MR. LANIER:

2 Q. You remember he asked you, he
3 said: "The requirements of the law" -- and
4 he used Exhibit 3, and he put Exhibit 3 up
5 there which has 1301.74(a) -- "before
6 distributing a controlled substance to any
7 person who the registrant does not know to be
8 registered to possess, got to make a good
9 faith inquiry to determine if they were
10 registered to possess the controlled
11 substance."

12 And he asked you about that,
13 remember?

14 A. Yes.

15 Q. Well, have you ever seen those
16 magicians who do a sleight of hand where they
17 distract you over here while they're doing
18 something over there?

19 Are you familiar with that?

20 A. Yes.

21 Q. Okay. He asked you like
22 1301.74(a) is the only part of this law.

23 It's not the only part of the
24 law, is it?

25 MR. EPPICH: Object to form.

1 Misstates the question.

2 THE WITNESS: No, it's not.

3 QUESTIONS BY MR. LANIER:

4 Q. So when he asked you, the
5 requirement of 1301.74(a) is only to see if a
6 customer is registered, that's not the only
7 section that applies to these distributors.

8 They got to do more than that,
9 don't they?

10 MR. EPPICH: Object to form.

11 Vague.

12 THE WITNESS: Yes, they do.

13 QUESTIONS BY MR. LANIER:

14 Q. They got to do subpoint (b)
15 that came after his subpoint (a). I've
16 highlighted it here on Exhibit 3.

17 Do you see it?

18 A. I do.

19 Q. "The registrant," McKesson in
20 this case, "shall design" -- or any of the
21 other distributors -- "shall design and
22 operate a system to disclose to the
23 registrant suspicious orders of controlled
24 substances. The registrant shall inform the
25 field division office of the administration

1 in his area of suspicious orders when
2 discovered."

3 By the way, it says "when
4 discovered," doesn't it?

5 A. Yes.

6 Q. This is that 1970s law?

7 A. It is.

8 Q. "Suspicious orders include
9 orders of unusual size, orders deviating
10 substantially from a normal pattern, orders
11 of unusual frequency."

12 That's included, but that's not
13 an exclusive list of what makes something
14 suspicious, fair?

15 MR. EPPICH: Objection. Calls
16 for a legal conclusion. Foundation.

17 THE WITNESS: Yes, that's fair.

18 QUESTIONS BY MR. LANIER:

19 Q. All right. And so my question
20 is, he followed up by saying this: "Does
21 1301.74 say distributors can't ship
22 suspicious orders?"

23 Remember that?

24 A. Yes.

25 MR. EPPICH: Objection. Form.

1 Misstates the question.

2 QUESTIONS BY MR. LANIER:

3 Q. Well, that's not the part that
4 tells you you can't ship them. You're not
5 allowed to sell something that you are
6 suspicious may be used for illegal purposes,
7 are you?

8 MS. MCCLURE: Form.

9 Foundation. Calls for a legal
10 conclusion. Misstates.

11 MS. WICHT: Vague.

12 THE WITNESS: That's correct.

13 QUESTIONS BY MR. LANIER:

14 Q. Okay. Good.

15 Anyway, even setting the law
16 aside, what's most important, community
17 health and safety or company profits --

18 MR. EPPICH: Objection.

19 QUESTIONS BY MR. LANIER:

20 Q. -- for selling illegal drugs?

21 MR. EPPICH: Objection to form.
22 Argumentative.

23 MS. WICHT: Scope.

24 MS. MCCLURE: Foundation.

25

1 QUESTIONS BY MR. LANIER:

2 Q. This is a no-brainer. You
3 ought to be able to get this one?

4 MS. MCCLURE: Objection.
5 Argumentative.

6 MR. BENNETT: I'll join in the
7 objection. Argumentative.

8 MR. LANIER: All right. Let me
9 go back to the original question.

10 SPECIAL MASTER COHEN:
11 Sustained.

12 QUESTIONS BY MR. LANIER:

13 Q. Even setting the law aside,
14 what's most important, community health and
15 safety or company profits from selling
16 illegal drugs?

17 MR. EPPICH: Object to form.
18 Foundation.

19 MS. WICHT: Scope.

20 THE WITNESS: In my opinion,
21 it's the health and safety.

22 QUESTIONS BY MR. LANIER:

23 Q. And then the McKesson lawyer
24 asked you this one. He said: "Isn't it true
25 there are other causes of the opioid crisis,

1 like illegal prescribing?"

2 Remember that?

3 A. Yes.

4 Q. "Question: A good suspicious
5 order monitoring system can even help catch
6 illegal prescribing, can't it?"

7 MR. EPPICH: Objection to form.

8 MR. HAHN: Objection.

9 THE WITNESS: Yes, it can.

10 QUESTIONS BY MR. LANIER:

11 Q. And then he said:
12 "Distributors can't control what happens to
13 pills once the pills are delivered to the
14 customer of the pharmacy?"

15 Remember that one?

16 A. Yes.

17 MR. EPPICH: Objection.

18 QUESTIONS BY MR. LANIER:

19 Q. But the distributor has a ton
20 of control before that, don't they?

21 MR. EPPICH: Objection. Form.
22 Foundation. Vague.

23 THE WITNESS: Yes, they do.

24 QUESTIONS BY MR. LANIER:

25 Q. And then the McKesson lawyer

1 said: "The DEA" -- and he talked about your
2 staffing and your Internet policies -- the
3 DEA staffing, not yours, and Internet
4 policies -- or Internet pharmacies, and
5 whether or not they had enough staff.

6 And you said: "I don't know if
7 they did or didn't."

8 You wouldn't go along with him
9 on that, remember?

10 MR. EPPICH: Objection.

11 Argumentative. Misstates the
12 testimony and questions.

13 THE WITNESS: Yes, I remember
14 that.

15 QUESTIONS BY MR. LANIER:

16 Q. Well, my question is pretty
17 simple. If the companies do their jobs
18 right, the DEA had plenty of manpower when
19 you were there, didn't it?

20 MR. EPPICH: Objection. Calls
21 for a legal conclusion.

22 QUESTIONS BY MR. LANIER:

23 Q. Based on your opinion?

24 MR. EPPICH: Objection. Form.

25 MS. MCCLURE: Objection.

1 Scope.

2 MR. BENNETT: Objection.

3 Scope.

4 You're not speaking on behalf
5 of the DEA. You may give your
6 personal opinion.

7 QUESTIONS BY MR. LANIER:

8 Q. True?

9 A. I really can't comment on that
10 because there's so many other things that
11 DEA's involved in. It's not just --

12 Q. Ah, and you shouldn't comment
13 on that stuff. You're right. You're right.
14 I'll pull that down. I don't want y'all to
15 divulge DEA secrets.

16 Okay. Shifting gears to some
17 stuff from AmerisourceBergen's lawyer and
18 others.

19 You were asked this question by
20 AmerisourceBergen yesterday: "In the course
21 of your role as a diversion investigator and
22 a group supervisor, you accepted these
23 excessive purchase reports as compliant with
24 the Controlled Substances Act?"

25 Do you remember that?

1 A. Yes.

2 Q. Sir, but after-the-fact
3 reporting of suspicious orders has never been
4 in compliance with federal law according to
5 your understanding of the DEA's guidance
6 provided to registrants, true?

7 MS. MCCLURE: Objection. Form.
8 Scope. Vague. Misstates the witness'
9 prior testimony. Foundation. Asked
10 and answered.

11 MR. BENNETT: You can answer.

12 THE WITNESS: It was the
13 practice, but they may not have been
14 in compliance with the regulations.

15 QUESTIONS BY MR. LANIER:

16 Q. Right?

17 They may have been breaking the
18 regulations for a long time --

19 MS. MCCLURE: All same
20 objections.

21 QUESTIONS BY MR. LANIER:

22 Q. -- right?

23 A. Yes.

24 Q. Okay. I mean, that's part of
25 what this is about, you understand?

1 A. Yes.

2 Q. Okay. Good.

3 And I just want to clarify a
4 couple things for the record. The lawyer
5 just objected and said I mischaracterized
6 your testimony. I've got here the actual
7 draft from the court reporter. I don't think
8 I mischaracterized it. I think I wrote it
9 exactly the way it is, so I don't know what
10 she meant when she said I mischaracterized
11 it.

12 But you see that's exactly what
13 you said yesterday? It's exactly what the
14 question was.

15 MS. MCCLURE: That was in
16 response to your second question, not
17 the first.

18 QUESTIONS BY MR. LANIER:

19 Q. Do you see that?

20 A. I see that.

21 Q. And now she says that was in
22 response to my second question, not the
23 first.

24 Sir, you hadn't testified about
25 the second question until I asked you, true?

1 MS. MCCLURE: Again,
2 mischaracterizes.

3 THE WITNESS: True.

4 QUESTIONS BY MR. LANIER:

5 Q. I got that testimony on that
6 from a Mr. Thomas Prevoznik.

7 Do you know him?

8 A. I do.

9 Q. Mr. Prevoznik was the actual
10 designate by the DEA to speak on behalf of
11 the DEA, as opposed to you, who's just
12 speaking as you, right?

13 A. Correct.

14 Q. And I did write it exactly
15 right, in spite of the lawyer's objection.

16 "Has after-the-fact reporting
17 of suspicious orders ever been in
18 compliance" -- ever been in compliance --
19 "with federal law according to the DEA's
20 guidance provided to registrants?"

21 The answer was: "No." And
22 that's from the DEA witness.

23 So he would agree with you that
24 this is a true statement: After-the-fact
25 reporting has never been in compliance,

1 right?

2 MS. WICHT: Object to form.

3 MS. MCCLURE: Form.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. LANIER:

6 Q. That's why the law says it's
7 when -- I'm using Exhibit 30 -- yeah, here it
8 is. Exhibit 3. The law is specific and says
9 you're supposed to turn in suspicious orders
10 "when discovered by the registrant," not at
11 the end of the month after you've sold them
12 and made the money?

13 MS. MCCLURE: Form.

14 QUESTIONS BY MR. LANIER:

15 Q. Right?

16 MS. MCCLURE: Calls for a legal
17 conclusion.

18 THE WITNESS: It does say "when
19 discovered," yes.

20 QUESTIONS BY MR. LANIER:

21 Q. And you knew who Linden Barber
22 was, didn't you?

23 A. Yes.

24 MR. LANIER: I want to take a
25 break for five minutes, please.

1 VIDEOGRAPHER: We're going off
2 record. The time is 11:08.

3 (Off the record at 11:08 a.m.)

4 VIDEOGRAPHER: We're going back
5 on record. Beginning of Media File 5.
6 Time is 11:23.

7 QUESTIONS BY MR LANIER:

8 Q. Sir, just a few final things I
9 want to make sure that I've covered, and I'll
10 pass the witness, and we'll be through with
11 your road for this moment, though I think I
12 get to come back and we'll travel another
13 road together in a little bit.

14 The DEA may answer a specific
15 question about whether part of a system is
16 appropriate, and the DEA will give its
17 opinion.

18 We know that based on your
19 testimony yesterday, right?

20 MR. BENNETT: Objection.

21 Scope.

22 He doesn't speak for the DEA.

23 He may speak about his practices while
24 he was at the DEA.

25 MR. LANIER: Great point.

1 QUESTIONS BY MR. LANIER:

2 Q. When you were at the DEA, you
3 yourself and people you observed may answer a
4 specific question about whether or not part
5 of a system's appropriate.

6 The DEA hasn't given its
7 opinion on that to distributors and others,
8 right?

9 A. Generally, yes.

10 Q. But the DEA does not do legal
11 work for the industry, true?

12 MR. BENNETT: Same objection.
13 Same instruction.

14 QUESTIONS BY MR. LANIER:

15 Q. Based on what you know?

16 MR. EPPICH: Object to form.

17 THE WITNESS: Based on what I
18 know, that's true.

19 QUESTIONS BY MR. LANIER:

20 Q. And industry, based on what you
21 know, is required to interpret and follow the
22 law. That's part of the honor system and the
23 law if they want to be allowed to make money
24 selling opioids, true?

25 MS. MCCLURE: Objection.

1 Compound.

2 MS. WICHT: Objection to form.

3 MR. EPPICH: Object to form.

4 THE WITNESS: It's part of the
5 requirement if they want to continue
6 to be registered to handle controlled
7 substances.

8 QUESTIONS BY MR. LANIER:

9 Q. In other words, if they want to
10 legally sell opioids, industry is required to
11 interpret and follow the law, true?

12 A. True.

13 Q. Now, the AmerisourceBergen
14 lawyer pointed out yesterday that determining
15 suspicious orders is subjective. There's not
16 a formula that is a litmus test where you can
17 say yes/no automatically.

18 A computer is not going to do
19 it, right?

20 A. That's correct.

21 Q. This is a reason that you need
22 to be hypervigilant if you're a registrant,
23 if you're a distributor. You need to truly
24 know your customer and truly look for
25 suspicious orders and truly do your due

1 diligence if it looks like something might be
2 suspicious, true?

3 MS. MCCLURE: Objection.

4 Vague. Compound.

5 MR. EPPICH: Object to form.

6 Calls for a legal conclusion.

7 THE WITNESS: Yeah, the
8 registrants need to be vigilant.

9 QUESTIONS BY MR. LANIER:

10 Q. And in fairness, they need to
11 be very vigilant, or I put it hypervigilant.
12 They really need to pay attention to this,
13 don't they?

14 MS. MCCLURE: Same objections.

15 MR. EPPICH: Object to form.

16 Calls for a legal conclusion.

17 THE WITNESS: Yes.

18 QUESTIONS BY MR. LANIER:

19 Q. This is based on your
20 understanding. I know you're not
21 interpreting the law. But this is from your
22 perspective the legal responsibility of the
23 distributor, true?

24 MR. EPPICH: Object to the
25 form. Calls for a legal conclusion.

1 THE WITNESS: True.

2 QUESTIONS BY MR. LANIER:

3 Q. Now, you were asked another
4 curious question yesterday about is it
5 possible that 90 percent of orders shipped
6 are suspicious, and you said you don't see
7 how 90 percent of the orders shipped to be a
8 suspicious number.

9 Do you remember that?

10 A. I do.

11 Q. Now, did you ever read the
12 deposition given by the DEA in this case,
13 someone speaking on behalf of the DEA?

14 A. I did not.

15 Q. I want to show you part of
16 Mr. Prevoznik's deposition. It's Volume II
17 from April 18, 2019. Let me give you some of
18 the testimony that I'm going to reference so
19 you can look at it.

20 I'm specifically interested in
21 what starts at the bottom of page 628. This
22 is questioning by Mr. Farrell. Mr. Farrell
23 has been one of the key lawyers for years in
24 trying to chase down this data and
25 information.

1 Okay?

2 MR. EPPICH: Object to form.

3 MS. MCCLURE: Object to the
4 narrative.

5 QUESTIONS BY MR. LANIER:

6 Q. Do you know him? He's a
7 handsome fellow from West Virginia, real
8 athletic.

9 MS. LEVY: Objection.

10 THE WITNESS: I don't recall
11 him.

12 QUESTIONS BY MR. LANIER:

13 Q. Okay. He's sitting right over
14 there.

15 Seriously, Mr. Farrell asked:
16 "Do you agree" -- this is to the DEA. "Do
17 you agree if a wholesale distributor gets a
18 flag of a suspicious order, that they've
19 determined to be a suspicious order, and that
20 they block that shipment, that they should
21 terminate all future sales to that same
22 customer until they can rule out that
23 diversion is occurring?"

24 Do you see the question?

25 A. I do.

1 Q. And you're going to find this
2 really stunning, but there's lots of
3 objections before the answer.

4 Everybody should object to me
5 saying that.

6 Strike what I just said. That
7 actually is objectionable.

8 The answer is: "Yes, I would
9 agree."

10 Do you see that?

11 A. I do.

12 Q. So if, in fact, that once there
13 is a flag of a suspicious order, someone's
14 determined something's suspicious, a
15 suspicious order, and as a result, all of the
16 orders to that pharmacy, customer, are
17 stopped until a real determination is made
18 that rules out diversion, that could really
19 change the picture and actually make
20 90 percent of orders shipped suspicious --

21 MS. SWIFT: Object to the form
22 of the question.

23 QUESTIONS BY MR. LANIER:

24 Q. -- in certain years that are at
25 issue here.

1 Would you agree?

2 MS. SWIFT: Object to form.

3 MR. EPPICH: Object to form.

4 Incomplete hypothetical. Calls for
5 speculation.

6 MS. MCCLURE: Foundation.

7 THE WITNESS: No, I wouldn't
8 agree with that.

9 QUESTIONS BY MR. LANIER:

10 Q. Well, let's just be real clear
11 then.

12 You hadn't done the math, had
13 you?

14 A. This is the first time I've
15 seen this.

16 Q. In other words, when the lawyer
17 asked you yesterday, "Would you be" -- "Would
18 you agree with the idea that 90 percent of
19 the orders shipped are suspicious?" and you
20 said, "No," you hadn't done that math, have
21 you?

22 MS. WICHT: Object to form.

23 Mischaracterizes.

24 QUESTIONS BY MR. LANIER:

25 Q. You're guessing?

1 MS. WICHT: Mischaracterizes
2 the testimony yesterday.

3 THE WITNESS: Yes, that's my
4 opinion.

5 QUESTIONS BY MR. LANIER:

6 Q. Yeah. It's your opinion based
7 upon no research?

8 MS. MCCLURE: Objection.

9 QUESTIONS BY MR. LANIER:

10 Q. You have not researched the
11 question of how many pharmacies had
12 suspicious orders that had not done their due
13 diligence and had not resolved them and
14 continued to sell.

15 You have not done the math on
16 that, have you?

17 A. I have not.

18 MS. WICHT: Objection to form.

19 QUESTIONS BY MR. LANIER:

20 Q. Thank you.

21 And then the last thing I want
22 to do on your industry work and our stop
23 there is -- lest there be any concern, I want
24 to go over and ask you if you are aware of
25 certain things, if you have personal

1 knowledge.

2 Rite Aid, they're a pharmacy,
3 right?

4 A. Yes.

5 Q. Do you know about them paying a
6 \$5 million fine in 2009 for filling
7 prescriptions that were not issued for
8 legitimate medical purposes and failing to
9 notify the DEA of significant thefts and
10 losses that they were required -- and other
11 records they were required to keep under the
12 Controlled Substances Act?

13 MR. BENNETT: Objection.

14 MR. LAVELLE: Object to form.

15 MR. BENNETT: Objection.

16 Scope.

17 You may answer that question
18 yes or no only.

19 THE WITNESS: No.

20 QUESTIONS BY MR. LANIER:

21 Q. Did you know about CVS in 2013
22 having to pay an \$11 million fine for
23 recordkeeping violations under the Controlled
24 Substances Act?

25 MR. BENNETT: You can answer.

1 THE WITNESS: Yes or no?

2 QUESTIONS BY MR. LANIER:

3 Q. Yes, sir.

4 MR. BENNETT: You can answer
5 the question.

6 THE WITNESS: Yes.

7 QUESTIONS BY MR. LANIER:

8 Q. Did you know about CVS in 2015
9 paying a \$22 million fine?

10 A. No.

11 Q. 2016, paying an \$8 million
12 fine?

13 A. No, I don't recall that.

14 Q. 2017, paying a \$5 million fine?

15 A. No.

16 Q. Do you know about Walgreens in
17 2013 paying an \$80 million fine --

18 MS. SWIFT: Objection. Form.

19 QUESTIONS BY MR. LANIER:

20 Q. -- for filling prescriptions
21 that they knew or should have known were not
22 issued for a legitimate medical purpose?

23 MS. SWIFT: Object to form.

24 MR. BENNETT: Objection.

25 Scope.

1 You may answer that question
2 yes or no only.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. LANIER:

5 Q. Well, these aren't rogue
6 Internet pharmacies, are they?

7 A. No.

8 Q. Do you know any other fines of
9 pharmacies off the top of your head?

10 A. I do not.

11 Q. So fining the companies, have
12 you found fining the companies doesn't always
13 seem to work?

14 MR. EPPICH: Object to form.

15 THE WITNESS: That's correct.

16 QUESTIONS BY MR. LANIER:

17 Q. The DEA used to have at its
18 disposal a tool it no longer has, true?

19 MR. BENNETT: Objection.

20 Vague.

21 MS. MCCLURE: Form.

22 THE WITNESS: I'm not aware
23 that any tools have been taken away.

24 QUESTIONS BY MR. LANIER:

25 Q. Are you familiar with the

1 Marino Bill?

2 MS. MCCLURE: Vague.

3 THE WITNESS: No.

4 QUESTIONS BY MR. LANIER:

5 Q. It was subject to that article
6 that we looked at earlier that had the yellow
7 dots, the Marino Bill -- I think there's just
8 one N in Marino -- that took away some of the
9 powers of the DEA.

10 You're not familiar with that?

11 MS. MCCLURE: Form.

12 Foundation. Mischaracterizes.

13 THE WITNESS: I had not heard
14 of that name, but I've heard of a bill
15 that has different requirements than
16 they had in the past.

17 QUESTIONS BY MR. LANIER:

18 Q. So you don't have any knowledge
19 of whether or not the DEA still has today all
20 of the same tools at its disposal that it had
21 when you were there?

22 A. No, I don't know.

23 MR. LANIER: Okay. Brings me
24 to the end of the road. I'll pass the
25 witness.

1 MS. MCCLURE: Off the record.

2 VIDEOGRAPHER: We're going off
3 record. The time is 11:36.

4 (Mapes Exhibit 32 marked for
5 identification.)

6 (Off the record at 11:36 a.m.)

7 VIDEOGRAPHER: We're going back
8 on the record. Beginning of Media
9 File Number 6. The time is 12:59.

10 RE-EXAMINATION

11 QUESTIONS BY MS. MCCLURE:

12 Q. Good afternoon, Mr. Mapes.

13 A. Good afternoon.

14 Q. Just a reminder, my name is
15 Shannon McClure. I represent
16 AmerisourceBergen Drug Corporation. I just
17 have a few follow-up questions for you today.

18 I'm going to be talking about
19 certain things that Mr. Lanier talked to you
20 about, so it may seem less like the roadmap
21 that Mr. Lanier had and a little more
22 scattershot. So if at any time you'd like me
23 to clarify a little bit more about where I
24 am, that's the nature of conducting this part
25 of the examination, which is a response to

1 what the plaintiffs have done.

2 Will you agree that if at any
3 time you would like me to orient you as to
4 what we're talking about, just let me know.

5 Okay?

6 A. Okay.

7 Q. Do you recall Mr. Lanier asking
8 you about some audits and work that you had
9 done on behalf of AmerisourceBergen Drug
10 Corporation after you had left DEA?

11 A. Yes.

12 Q. And that included audits of
13 AmerisourceBergen's order monitoring program
14 and diversion control program, right?

15 A. Yes.

16 Q. And those are audits that we
17 talked about yesterday, first, before
18 Mr. Lanier questioned you today when we
19 talked about your post-DEA consulting work,
20 right?

21 A. Yes.

22 Q. And Mr. Lanier showed you a
23 privilege log marked as Exhibit 20 and asked
24 you about the fact that several entries here
25 indicated that you were involved in these.

1 Do you recall looking at this
2 document, Exhibit Number 20?

3 A. Yes.

4 Q. Okay. And those audits that
5 you conducted on behalf of AmerisourceBergen,
6 we did, in fact, talk about yesterday that
7 you had done several years of audits in which
8 you generally found that the company was in
9 compliance.

10 Do you recall that?

11 A. Yes.

12 Q. And that's basically walking
13 the walk, in the language that Mr. Lanier had
14 used. You found in your review of the order
15 monitoring program of AmerisourceBergen that
16 AmerisourceBergen was walking the walk,
17 right?

18 A. Generally, yes.

19 Q. And so Mr. Lanier presented
20 this document to you and the jury, and it
21 seemed -- and acted like all those audits
22 were, in fact, not produced in this case and
23 were not going to be available and had not
24 been produced by AmerisourceBergen.

25 Was that your understanding of

1 the situation yesterday --

2 A. Yeah.

3 Q. -- or earlier today? I'm
4 sorry.

5 A. Yes.

6 Q. Okay. He didn't tell you that,
7 in fact, every single one of the documents on
8 this list that we're looking at here, which
9 comprises two pages, had, in fact, been
10 produced by AmerisourceBergen. He didn't
11 tell you that, right?

12 A. That's correct.

13 Q. Okay. Thank you.

14 Mr. Mapes, does DEA have ethics
15 rules in place about post-DEA employment for
16 DEA employees like yourself who leave or
17 retire?

18 MR. BENNETT: Objection.

19 Scope.

20 You can answer based on your
21 personal knowledge but not on behalf
22 of DEA.

23 THE WITNESS: Yes, there are.

24 QUESTIONS BY MS. MCCLURE:

25 Q. And you followed those

1 post-employment ethics rules?

2 A. Yes.

3 Q. Thank you.

4 Mr. Lanier's questions to you
5 seemed to imply and seemed to say to me, at
6 least, and perhaps the jury as well, that
7 there was -- that you, as a former DEA
8 agent -- or former DEA diversion investigator
9 and your various roles in DEA, had done
10 something wrong by leaving DEA and then going
11 to work for industry.

12 Do you recall those questions?

13 A. I recall the questions, yes.

14 Q. Okay. And, in fact, your role
15 as a consultant, am I stating it accurately
16 to say that you were trying to help companies
17 be compliant with DEA regulations and policy
18 and the Controlled Substances Act?

19 A. That's correct.

20 Q. And compliance with the
21 Controlled Substances Act would be something
22 that the DEA, in your experience, would want
23 and expect of registrants, right?

24 A. That's correct.

25 Q. And so your goal and DEA's goal

1 are the same in your conducting of your
2 consulting business today, or for the --
3 since you left DEA, not today, correct?

4 MR. BENNETT: Objection.
5 Scope.

6 You may speak in your personal
7 capacity, but you may not speak on
8 behalf of DEA in answering this
9 question.

10 THE WITNESS: Yes, they are.

11 QUESTIONS BY MS. MCCLURE:

12 Q. And do you think that there's
13 anything wrong that you've done in consulting
14 for various industry participants to help
15 them be compliant with the Controlled
16 Substances Act and DEA policies and
17 procedures in your post-DEA work?

18 A. No.

19 Q. And moving on to a different
20 topic -- as I said, this would be less like a
21 roadmap and more like stops along the way.

22 To orient you to what we're
23 going to be talking about next, I want to
24 show you the document that was marked as
25 Exhibit 4 and Exhibit 4A, same document, just

1 different Bates numbers, which are a series
2 of letters between 1996 and 1998 regarding
3 DEA's approval of Amerisource -- I'm sorry,
4 of Bergen's newly developed system to
5 identify and report suspicious orders for
6 controlled substances.

7 Do you recall this document?

8 A. Yes.

9 Q. And Mr. Lanier's questions to
10 you seemed to suggest that he thought that
11 this document related only to
12 methamphetamine, the Methamphetamine Control
13 Act, and phentermine is the -- or Sudafed.

14 But is it your understanding
15 that this document relates only to
16 methamphetamine or pseudoephedrine, or does
17 it in your mind relate more broadly?

18 A. I believe it relates to
19 controlled substances and regulated
20 chemicals.

21 Q. Okay. And so the language here
22 is that this is "an approval of the newly
23 developed system to both identify and report
24 suspicious orders for controlled substances
25 and regulated chemicals," right?

1 A. Yes.

2 Q. And, in fact, if we look at the
3 original letter -- one moment.

4 Well, I'll just use the one
5 that has my underlining in it because,
6 really, what does it matter.

7 If we look at the original
8 letter dated September 30, 1996, that
9 Mr. Zimmerman wrote to Mr. Gitchel, it, in
10 fact, talks about "an innovative, new system
11 to both monitor and report customer orders of
12 controlled substances which fit the
13 suspicious order criteria outlined in 21 CFR
14 1301.74(b)."

15 Do you see that?

16 A. Yes.

17 Q. Okay. And that's -- so it is
18 your understanding, having reviewed this
19 series of letters marked as Exhibit 4 and
20 Exhibit 4A, that that's an approval of
21 AmerisourceBergen's entire suspicious order
22 monitoring and diversion control system, not
23 just dealing with listed chemicals or
24 Sudafed -- or the listed chemical that would
25 go into the manufacturing of methamphetamine?

1 A. That would be the Sudafed.

2 Q. Okay. So this system, this
3 approval, is for the entire diversion control
4 program and suspicious order monitoring
5 system, based on what you've seen in these
6 letters?

7 A. For the entire suspicious order
8 monitoring system, yes.

9 Q. Okay. Thank you.
10 And so looking again at a
11 demonstrative document that Mr. Lanier had
12 shown you, I want to make sure I have this
13 right, that this approved not only the method
14 of providing information but the system that
15 was used to identify suspicious orders as
16 well, correct?

17 A. Yes.

18 Q. And that this was not just
19 related to methamphetamines, it was related
20 to all controlled substances, whether it's
21 methamphetamine, opioids or anything else
22 that's regulated under 1301.74(b), correct?

23 A. Yes.

24 (Mapes Exhibit 33 marked for
25 identification.)

1 QUESTIONS BY MS. MCCLURE:

2 Q. I'm going to hand you a
3 document that's been marked Exhibit 33.

4 Let me know when you've had a
5 chance to review that.

6 A. Okay.

7 Q. And so you testified in a
8 lawsuit in West Virginia in 2016, correct?

9 A. Yes.

10 Q. And in that you testified that
11 the shift from ship and then report to
12 instead halt and investigate was a gradual
13 change, right?

14 A. Yes, it was.

15 Q. And that the regulations did
16 not change, but the DEA's interpretation of
17 them did, right?

18 A. Yes.

19 Q. And that companies were
20 responding to DEA's changed interpretation
21 and then coming up with programs to handle
22 that new different expectation, right?

23 A. That's correct.

24 Q. And there was not a date
25 certain by which companies were expected or

1 anticipated to implement the changes to DEA's
2 new interpretation of 1301.74(b)?

3 A. That's correct.

4 Q. And so here Mr. Lanier had
5 excerpted a statement you had made to me
6 yesterday when I was originally talking to
7 you, right, and that you had accepted these
8 excessive purchase reports as compliant with
9 the Controlled Substances Act, right?

10 That's what you testified to
11 yesterday?

12 A. Yes.

13 Q. And then Mr. Lanier presented
14 you with this document that said that
15 essentially after-the-fact reporting of
16 suspicious orders has never been in
17 compliance with federal law according to the
18 DEA's guidance.

19 That testimony, to the extent
20 that this actually reflects your testimony,
21 which I don't believe it does, is not
22 actually consistent with the testimony you
23 gave earlier yesterday or with the testimony
24 you gave in 2016 when you were under oath in
25 that proceeding, correct?

1 MR. BENNETT: Objection. Form.

2 MR. LANIER: Objection. Form.

3 MR. BENNETT: Misstates
4 testimony.

5 THE WITNESS: The regulation
6 didn't change. So the regulation was
7 still there, but the practice was to
8 allow them to send the excessive
9 purchase reports and that that was
10 considered to be in compliance, even
11 though the regulation hadn't changed
12 to allow that or to not allow that.

13 QUESTIONS BY MS. MCCLURE:

14 Q. And so that was -- the
15 submission of excessive purchase reports was
16 considered, in your experience at DEA, to be
17 in compliance with the Controlled Substances
18 Act for the period of time that those reports
19 were accepted, correct?

20 A. Yes.

21 Q. Just one moment.

22 And in addition, I just asked
23 you a question as to whether they were in
24 compliance with the Controlled Substances
25 Act.

1 They were also then in
2 compliance -- I just asked you a question
3 that stated that they were in compliance --
4 the acceptance of the excessive purchase
5 reports is being compliant -- was compliant
6 with the Controlled Substances Act.

7 They were also compliant with
8 the regulations that underscored and
9 implemented that act, correct?

10 MR. BENNETT: Objection.

11 Scope.

12 You may answer based on your
13 personal understanding, but you may
14 not speak on behalf of DEA.

15 THE WITNESS: Personally we
16 accepted them, the excessive purchase
17 reports, as compliant for the
18 suspicious order monitoring, yes.

19 MS. MCCLURE: Okay. Thank you,
20 Mr. Mapes.

21 I have no further questions,
22 and at this time I turn my time over
23 to counsel for additional defendants.

24 Thank you very much.

25 MR. LANIER: Make sure there's

1 no fuss. I'm going to have one of the
2 other lawyers do our recross.

3 Nobody's got any problem with
4 that, do they?

5 Thank you.

6 (Mapes Exhibit 34 marked for
7 identification.)

8 RE-EXAMINATION

9 QUESTIONS BY MR. EPPICH:

10 Q. Good afternoon, Mr. Mapes. My
11 name is Chris Eppich. Once again, I'm from
12 the McKesson company.

13 A. Good afternoon.

14 Q. I'm going to hand you what I've
15 marked as Exhibit Number 34 in this
16 litigation.

17 Exhibit 34, Mr. Mapes, is a
18 partial list of the attorneys in this case.

19 Do you see at the top of the
20 page it says, "1:17-md-02804-DAP, In Re:
21 National Prescription Opiate Litigation, Dan
22 Aaron Polster presiding"?

23 Do you see that, sir?

24 A. I do.

25 Q. And then it says "attorneys."

1 Do you see that, sir?

2 A. Yes.

3 Q. If we could turn to page 2 of
4 Exhibit 34, the third name down, sir, Richard
5 W. Fields, do you recognize that name?

6 A. Yes.

7 Q. Is Mr. Fields the attorney that
8 you met with during the summer and the fall
9 2018?

10 A. Yes, he's one of them.

11 Q. And do you see under
12 Mr. Fields' name he has his firm name,
13 Fields, PLLC?

14 Do you see that?

15 A. Yes.

16 Q. And then the address of his
17 firm?

18 Do you see that?

19 A. Yes.

20 Q. Did you have your meetings at
21 the Fields law firm in 2018 at that address,
22 if you recall?

23 A. I don't believe it was.

24 Q. Do you see under Mr. Fields'
25 address and e-mail it says the words "lead

1 attorney, attorney to be noticed"?

2 Do you see that, sir?

3 A. Yes.

4 Q. Earlier today, plaintiffs'
5 counsel asked you questions about two of its
6 expert witnesses, Mr. Jim Geldhof and Mr. Jim
7 Rafalski.

8 Do you remember that
9 discussion?

10 A. Yes, I do.

11 Q. Now, in your time at DEA, did
12 you have an opportunity to work on projects
13 with Mr. Geldhof?

14 MR. BENNETT: Objection.

15 Scope.

16 You can answer that question
17 yes or no only.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. EPPICH:

20 Q. You had the opportunity to
21 evaluate his work product?

22 A. No.

23 Q. Do you have any personal
24 knowledge as to his experience,
25 qualifications or effectiveness with DEA

1 diversion issues?

2 A. Yes.

3 Q. Did you have an opportunity to
4 work with Mr. Rafalski while at DEA?

5 A. No.

6 Q. Did you ever have an
7 opportunity to evaluate Mr. Rafalski's work?

8 A. No.

9 Q. Did you have an opportunity --
10 oh, strike that.

11 So you have no personal
12 knowledge as to Mr. Rafalski's experience,
13 qualifications or effectiveness with DEA
14 diversion issues; is that correct?

15 A. That's correct.

16 Q. If I could ask you to turn to
17 Exhibit 26.

18 Sir, do you have Exhibit 26 in
19 your hand?

20 A. Yes, I do.

21 Q. Plaintiffs' counsel asked you
22 some questions about your e-mail on the
23 bottom of page 1 and continuing on to page 2.

24 Do you remember those
25 questions?

1 A. Yes.

2 Q. Now, Mr. Mays at
3 AmerisourceBergen then responded to your
4 original e-mail in this chain. He responded
5 on Tuesday, August 16, 2005.

6 Do you see that e-mail on
7 page 1?

8 A. I do.

9 Q. He says, "Mike, thanks for the
10 info. I would love to know the name of the
11 pharmacy. It looks like the picture in the
12 presentation indicates that Example Number 2
13 is a warehouse of some type. I'm very
14 concerned that this type of location would
15 have received retail pharmacy licensing and a
16 DEA registration in the first place."

17 Do you see that, sir?

18 A. I do.

19 Q. And you respond at the top of
20 the page on August 16, 2005. You respond to
21 Mr. Mays and you say, "Steve, we are also
22 concerned that a pharmacy such as the one in
23 the picture could be licensed by the state
24 authorities and obtain a DEA registration.
25 For that reason, DEA is physically inspecting

1 pharmacy locations in some parts of the
2 country before they are authorized to receive
3 a DEA registration to be sure that they are,
4 in fact, a retail pharmacy. DEA can no
5 longer rely on a state physical inspection
6 before a state license is issued."

7 Do you see that, sir?

8 A. I do.

9 Q. Now, August 2005, that was
10 during the distributor briefings that you
11 were providing to certain distributors on
12 Internet pharmacy issues, correct?

13 A. Yes.

14 Q. And you shared ABDC's concern
15 that a pharmacy such as the one that you
16 discussed with ABDC could receive a DEA
17 registration, correct?

18 A. Yes.

19 Q. Now, prior to this time, DEA
20 did not inspect pharmacies before approving
21 the pharmacy applicant's registration,
22 correct?

23 DEA was -- let me just stop
24 there.

25 Let me strike it. I'll ask it

1 again.

2 Now, prior to this time, DEA
3 did not inspect pharmacies before approving
4 the pharmacy's registration, correct?

5 MR. BENNETT: Objection.

6 Scope. This is outside the area that
7 he's authorized. He's also not
8 authorized to speak on behalf of DEA
9 or what DEA did.

10 He may answer based on his
11 personal experience what he or the
12 diversion investigators working under
13 him did.

14 THE WITNESS: We did not
15 routinely inspect physical locations
16 for retail pharmacies.

17 QUESTIONS BY MR. EPPICH:

18 Q. Instead, DEA was relying on
19 state inspections -- states' inspections of
20 pharmacy applicants, right?

21 MR. BENNETT: Objection.

22 Scope. He's not authorized to speak
23 on behalf of DEA or what DEA did.

24 He may testify about what he
25 personally did in his position at DEA

1 and what he relied on.

2 THE WITNESS: Yes, we -- the
3 groups that I was involved with relied
4 on the state license and the fact that
5 there had been an inspection, a
6 physical inspection, to obtain the
7 state license.

8 QUESTIONS BY MR. EPPICH:

9 Q. But the state inspections were
10 not detecting Internet pharmacies, were they?

11 MR. BENNETT: Objection.

12 Scope.

13 You may talk based in your
14 personal knowledge and not on behalf
15 of DEA.

16 THE WITNESS: In my experience,
17 they were not always detecting that.

18 QUESTIONS BY MR. EPPICH:

19 Q. And so DEA changed the policy,
20 right?

21 MR. BENNETT: Objection.

22 Scope.

23 This witness has not been
24 authorized to testify regarding DEA
25 policy or changes in policy.

1 To the extent he has personal
2 experience or knowledge as far as
3 changes, he may say what he observed
4 while he was at DEA.

5 THE WITNESS: My personal
6 experience at the time in the Denver
7 division was that it did not require
8 us to do inspections of retail
9 pharmacy applicants because the state
10 board in Colorado was doing
11 appropriate inspections.

12 QUESTIONS BY MR. EPPICH:

13 Q. But you're aware of other
14 divisions throughout the country where
15 inspections of pharmacies were occurring,
16 correct?

17 A. Yes.

18 Q. Now, in your experience, DEA
19 started to physically inspect pharmacies
20 seeking DEA registrations to distribute --
21 let me strike that.

22 Mr. Mapes, earlier today
23 plaintiffs' counsel asked you some questions
24 about DEA's distributor briefing with
25 McKesson.

1 Do you remember that
2 discussion?

3 A. Yes.

4 Q. And DEA's distributor briefing
5 with McKesson led to a series of telephone
6 conferences and meetings with McKesson as the
7 two discussed the DEA's new guidance and the
8 Internet pharmacy concern, right?

9 A. It did.

10 Q. DEA identified six suspected
11 Internet pharmacies to McKesson as part of
12 these meetings, correct?

13 A. I'd have to -- I don't remember
14 the exact number, but...

15 Q. But the DEA identified
16 suspected Internet pharmacies to McKesson
17 during these meetings?

18 A. Yes.

19 Q. McKesson stopped supplying
20 those pharmacies, right?

21 MR. BENNETT: You can answer,
22 if you know.

23 THE WITNESS: I don't recall
24 specifically without looking at the
25 documentation.

1 QUESTIONS BY MR. EPPICH:

2 Q. Well, in fact, one of the
3 pharmacies that McKesson stopped supplying
4 sued the DEA because McKesson immediately
5 stopped supplying controlled substances to
6 that pharmacy after meeting with DEA.

7 Do you recall that?

8 A. No, I do not.

9 Q. Do you recall testifying at a
10 federal district court hearing in Florida in
11 2006 in the case of United Prescription
12 Services versus Alberto Gonzales and Karen
13 Tardy {sic}?

14 A. I remember testifying in
15 Florida, yes.

16 Q. And do you recall that that
17 testimony was in relation to McKesson's
18 immediate cease of supplying controlled
19 substances to that pharmacy?

20 A. I don't remember the substance
21 of the testimony.

22 Q. But it's fair to say that
23 following the discussions that DEA had with
24 McKesson during these distributor meetings,
25 that McKesson acted promptly to address the

1 concerns of the DEA?

2 MR. BENNETT: Objection.

3 Scope.

4 This witness is not authorized
5 to disclose nonpublic information
6 about DEA activities or investigations
7 that they may have had.

8 To the extent that you can
9 answer this question with publicly
10 available information, you may answer.

11 THE WITNESS: And the question
12 again?

13 QUESTIONS BY MR. EPPICH:

14 Q. I'll restate the question, sir.

15 It's fair to say that following
16 the discussions the DEA had with McKesson
17 during these distributor meetings, that
18 McKesson acted promptly to address the
19 concerns of the DEA?

20 MR. BENNETT: Do you understand
21 my instruction in responding to that
22 question?

23 THE WITNESS: Yes.

24 MR. BENNETT: Okay.

25 THE WITNESS: I can't really

1 say.

2 QUESTIONS BY MR. EPPICH:

3 Q. You don't recall?

4 A. I just don't recall.

5 Q. Now, earlier today the
6 plaintiffs' counsel asked you and showed you
7 a slide. He asked you some questions about
8 other causes of the opioid crisis, e.g.,
9 illegal prescribing.

10 Do you remember this
11 conversation?

12 A. Yes.

13 Q. And he asked you whether or not
14 a good suspicious order monitoring system can
15 help catch that.

16 Do you remember that testimony,
17 sir?

18 A. Yes.

19 Q. Are you familiar with HIPAA?

20 A. Yes.

21 Q. What is HIPAA?

22 A. The Health Insurance Privacy
23 Act or something like that.

24 Q. Now, pursuant to that Act,
25 distributors don't have access to a patient's

1 medical records, correct?

2 A. Generally, no.

3 Q. And distributors are not in the
4 doctor's office when the doctor and the
5 patient are talking, are they?

6 A. Not in my experience, no.

7 Q. Now, you'll recall that
8 plaintiffs' counsel asked you -- he presented
9 the following question to you earlier today
10 in a slide titled "Diversion Control 101."

11 He asked you: "If a company
12 sees a suspicious order, the company has a
13 choice to make, ship/sell or hold and
14 investigate."

15 Do you remember this slide?

16 A. Yes.

17 Q. But this question isn't found
18 in the Controlled Substances Act, is it?

19 A. It doesn't say that
20 specifically in the Controlled Substances
21 Act, no.

22 Q. And it doesn't say this
23 specifically in the regulations, correct?

24 A. No.

25 Q. You started to ask distributors

1 to ask themselves this question as a part of
2 the distributor briefings, correct?

3 A. We did.

4 MR. EPPICH: Thank you,
5 Mr. Mapes. I have no further
6 questions.

7 We can go off the record.

8 VIDEOGRAPHER: We're going off
9 the record. The time is 1:33.

10 (Off the record at 1:33 p.m.)

11 VIDEOGRAPHER: Going back on
12 the record. Beginning of Media
13 File 7. Time, 1:39.

14 MR. EPPICH: Just a quick
15 housekeeping issue.

16 For the record, let's go ahead
17 and mark as Exhibit 4A, document
18 bearing Bates number ABDCMDL00269347
19 through 358.

20 And let's mark as Exhibit 35
21 three pages from the demonstratives
22 that plaintiffs presented this
23 morning, further marked up by
24 defendants.

25 We can go off.

1 (Mapes Exhibit 35 marked for
2 identification.)

3 VIDEOGRAPHER: Going off record
4 at 1:40.

5 (Off the record at 1:40 p.m.)

6 VIDEOGRAPHER: We're going back
7 on record. Beginning Media File 8.
8 The time is 1:59.

9 RE-EXAMINATION

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. Good afternoon, Mr. Mapes. We
12 met briefly yesterday, but my name is Laura
13 Fitzpatrick, and I'm here on behalf of the
14 plaintiffs, and I'm going to take over for
15 Mr. Lanier for a little bit.

16 I want to just kind of reorient
17 you and the jury here. I'd like to talk --
18 just a second.

19 I'd like to kind of redirect
20 us, call this my redirect roadmap that
21 Ms. Lanier made for me here.

22 I'd like to take us from the
23 muddy waters that you were brought into over
24 the last, I think, 45 minutes or so, back on
25 to what I'm going to call clarity road.

1 Okay?

2 A. Okay.

3 Q. All right. Now, you were shown
4 by the ABDC lawyer the document that we've
5 referred to as the methamphetamine document,
6 and there were some suggestions that ABDC had
7 a policy that the DEA approved of.

8 Do you recall that?

9 MS. MCCLURE: Form.

10 THE WITNESS: Yes.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. Okay. Now, would you agree
13 with me that a policy is no good if a company
14 doesn't follow it?

15 A. Yes.

16 Q. And would you agree that if
17 someone doesn't put their seat belt on and
18 they get into a car wreck, they may not be
19 protected by the seat belt?

20 MS. MCCLURE: Form.

21 THE WITNESS: Correct.

22 QUESTIONS BY MS. FITZPATRICK:

23 Q. Okay. Thank you.

24 Now, with respect to

25 Ms. McClure's questions to you about the ABDC

1 audits and the privilege log, you said that
2 you found the company just generally
3 compliant; is that right?

4 MS. MCCLURE: Form.

5 THE WITNESS: Yes.

6 QUESTIONS BY MS. FITZPATRICK:

7 Q. Okay. So does that mean that
8 if you only shoplift once a month instead of
9 every time that you enter a store that it's
10 not going to be against the law?

11 Still against the law,
12 correct --

13 MS. MCCLURE: Form. Vague.

14 QUESTIONS BY MS. FITZPATRICK:

15 Q. -- whether you do it once a
16 month or every day?

17 MS. MCCLURE: Form. Vague.

18 Compound. Ambiguous. Scope.

19 THE WITNESS: That's not what I
20 meant by saying "generally compliant."

21 QUESTIONS BY MS. FITZPATRICK:

22 Q. What did you mean?

23 A. I meant that there were minor
24 improvements that could be made, but they
25 were being generally compliant with their

1 policies.

2 Q. Compliant with their policy,
3 correct?

4 A. Yes.

5 Q. Okay. Now, Ms. McClure made a
6 big deal about you only appearing on one page
7 of a privilege log.

8 Do you recall that --

9 MS. MCCLURE: Form. Mis --

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. -- line of questioning?

12 MS. MCCLURE: Form.

13 Mischaracterizes.

14 THE WITNESS: She did say that
15 I was on that page of the privilege
16 log, yes.

17 QUESTIONS BY MS. FITZPATRICK:

18 Q. And only that page, correct?

19 MS. MCCLURE: Objection.

20 Misstates the question.

21 THE WITNESS: I don't recall
22 that, but...

23 QUESTIONS BY MS. FITZPATRICK:

24 Q. Okay. I'll represent to you
25 that Ms. McClure put -- well, let's have the

1 exhibit, actually. I think it was Exhibit
2 Number 1 -- 2?

3 MS. MCCLURE: 20.

4 MS. FITZPATRICK: I'm sorry,
5 20, yes, first of today.

6 QUESTIONS BY MS. FITZPATRICK:

7 Q. Thank you.

8 So, Mr. Mapes, Ms. McClure had
9 you look at Exhibit Number 20.
10 Do you see Exhibit Number 20 on
11 the screen in front of you?

12 A. Yes.

13 Q. And she said this was only one
14 page where you appeared on the ABDC privilege
15 log, correct?

16 MS. MCCLURE: Objection to
17 form. Misstates the record.

18 THE WITNESS: I don't remember
19 her exact language.

20 (Mapes Exhibit 36 marked for
21 identification.)

22 QUESTIONS BY MS. FITZPATRICK:

23 Q. Okay. Well, I'm going to show
24 you what we're going to mark as Exhibit
25 Number 36, which is a memorandum that was

1 done by some of the plaintiffs. Here you go.

2 Do you have Exhibit 36 in front
3 of you?

4 A. Yes.

5 Q. Okay. Now, would you agree
6 here with me, sir, that this is not just one
7 entry on a privilege log, that there are
8 several pages here where you are listed on
9 ABDC's privilege log?

10 And I might add that you're
11 also listed on the Henry Schein privilege log
12 as well as the Par and Endo privilege log.

13 Did you know that, sir?

14 MS. MCCLURE: Objection. Form.
15 Compound. Misstates the record.

16 THE WITNESS: I see that I am
17 several places on the
18 AmerisourceBergen privilege log.

19 QUESTIONS BY MS. FITZPATRICK:

20 Q. Okay. Thank you.

21 So it's more than just one,
22 correct?

23 A. Yes.

24 Q. Okay. Thank you, sir.

25 Now, there were some questions

1 about -- the ABDC lawyer asked you about the
2 gradual change, she called it a gradual
3 change, in what the companies were doing to
4 be in compliance with the law.

5 Do you recall that line of
6 questioning?

7 A. Yes.

8 Q. Okay. Now, did the questions
9 that the ABDC lawyer asked you change
10 anything about your testimony earlier today,
11 that this has always been the law?

12 MS. MCCLURE: Objection to the
13 form. Compound.

14 THE WITNESS: It has always
15 been the law but not necessarily the
16 practice of what DEA accepted.

17 QUESTIONS BY MS. FITZPATRICK:

18 Q. But you would agree with me
19 that whether DEA accepted it or not, the law
20 was the law, correct?

21 MS. MCCLURE: Objection to the
22 form. Calls for a legal conclusion.

23 THE WITNESS: Yes.

24 (Mapes Exhibit 37 marked for
25 identification.)

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. And in fact, speaking of the
3 DEA, I will mark as Exhibit Number 37 an
4 excerpt of the DEA's 30(b)(6) testimony.

5 Here you go, sir.

6 And do you understand what
7 30(b)(6) testimony is, sir?

8 A. Yes.

9 Q. So it means that the person
10 speaking is speaking for the company, not
11 just in their personal capacity, correct?

12 MS. MCCLURE: Form.

13 THE WITNESS: For the Agency,
14 yes.

15 QUESTIONS BY MS. FITZPATRICK:

16 Q. For the Agency.

17 All right. I'd like you to
18 take a look at what Mr. Prevoznik said. He
19 was asked: "Does the DEA take the position
20 that a registrant of controlled substances
21 has a duty to block shipments of suspicious
22 order?"

23 The DEA's answer was: "Yes.

24 He was also asked: "Is that
25 now and always has been the law in the United

1 States of America?"

2 What was his answer, sir?

3 A. "Yes."

4 MS. FITZPATRICK: Thank you.

5 MS. MCCLURE: Objection to the
6 narrative statements from counsel.

7 QUESTIONS BY MS. FITZPATRICK:

8 Q. All right, sir, I'd like to
9 talk a little bit about McKesson.

10 Now, the McKesson lawyer talked
11 to you about relying on state inspectors.

12 Do you recall that testimony?

13 A. Yes.

14 Q. Okay. Let me ask you this:
15 Does the DEA -- is the DEA a multimillion
16 dollar corporation?

17 MR. EPPICH: Object to the
18 form.

19 THE WITNESS: It's not a
20 corporation.

21 QUESTIONS BY MS. FITZPATRICK:

22 Q. Okay. Does it have endless
23 resources?

24 MS. MCCLURE: Form.

25 THE WITNESS: No.

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. Okay. If the companies had
3 maintained effective controls, there wouldn't
4 be much to inspect, would there?

5 MS. MCCLURE: Objection. Asked
6 and answered. Scope, in terms this is
7 supposed to be recross.

8 MR. STEPHENS: And objection.
9 Form.

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. You can answer, Mr. Mapes.

12 A. There would still be a lot to
13 inspect to be sure that they were maintaining
14 effective controls, so the oversight of those
15 companies.

16 Q. But if a company fails to
17 maintain effective controls, there's a lot
18 more to inspect, isn't there?

19 A. That's correct.

20 MS. MCCLURE: Form.

21 QUESTIONS BY MS. FITZPATRICK:

22 Q. Okay. Thank you.

23 All right. Now, there was --
24 another part of the blame game today was
25 the -- when we talked about the Internet

1 pharmacies. The McKesson lawyer talked to
2 you about the Internet pharmacies and how
3 they got their registrations and that their
4 registrations were granted by the DEA.

5 Do you recall that line of
6 questioning?

7 MS. MCCLURE: Objection.

8 Argumentative.

9 MR. EPPICH: Objection to the
10 form and characterization.

11 THE WITNESS: Yes.

12 QUESTIONS BY MS. FITZPATRICK:

13 Q. Okay. Defendants have a duty
14 to know their customers, correct?

15 MR. EPPICH: Objection. Calls
16 for a legal conclusion. Form.

17 THE WITNESS: Yes.

18 MS. MCCLURE: Scope.

19 QUESTIONS BY MS. FITZPATRICK:

20 Q. Is the DEA a registrant?

21 A. Yes.

22 Q. The DEA is a registrant and has
23 a duty to prevent against abuse and
24 diversion?

25 MR. BENNETT: Objection.

1 Scope.

2 You may not speak on behalf of
3 DEA. You may speak on your personal
4 understanding, if you have one.

5 THE WITNESS: DEA's
6 registrations are not as distributors
7 or manufacturers. They're as
8 analytical laboratories and that kind
9 of thing, so they have different
10 requirements.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. Correct.

13 And the DEA does not
14 distribute, manufacture or sell opioids, does
15 it?

16 A. It does not.

17 Q. Okay. Thank you.

18 MR. EPPICH: Objection to the
19 extent the demonstrative does not
20 reflect the testimony.

21 MS. FITZPATRICK: I'll fix that
22 right now.

23 QUESTIONS BY MS. FITZPATRICK:

24 Q. The DEA is not the same type of
25 registrant, correct?

1 A. Yes.

2 Q. Thank you, sir.

3 Now, I believe you already
4 testified to this today but to make sure that
5 there's no confusion for the jury, where do
6 Internet pharmacies get their pills?

7 MS. MCCLURE: Again, asked and
8 answered. Scope. Outside of the
9 scope of redirect.

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. Do they get them from the DEA,
12 sir?

13 MS. MCCLURE: All the same
14 objections.

15 THE WITNESS: No.

16 QUESTIONS BY MS. FITZPATRICK:

17 Q. Okay. Does the United States
18 government provide these?

19 A. No.

20 Q. Okay. The manufacturers,
21 distributors and pharmacies provide opioids,
22 correct?

23 MS. MCCLURE: All the same
24 objections, including scope of
25 recross.

1 THE WITNESS: Yes.

2 QUESTIONS BY MS. FITZPATRICK:

3 Q. Thank you.

4 Now, the McKesson lawyer talked
5 to you a little bit about the duty to ship
6 and when that -- when that duty existed and
7 when it didn't.

8 The CSA, which Mr. Lanier put
9 in front of you, says "report when
10 discovered," does it not?

11 MR. EPPICH: Object to the
12 form.

13 MS. MCCLURE: Form. Calls for
14 a legal conclusion.

15 THE WITNESS: The CSA does not.
16 The regulations do.

17 QUESTIONS BY MS. FITZPATRICK:

18 Q. Excuse me, yes. Apologies.

19 The regulations say -- let me
20 fix this. The regulations say "report when
21 discovered," correct?

22 A. Yes.

23 MS. MCCLURE: Same objections.

24 QUESTIONS BY MS. FITZPATRICK:

25 Q. Okay. Now, I looked up the

1 definition of the word "when" because I was a
2 little confused about why we were still
3 fighting about this. But the definition of
4 "when" is "at or during that time."

5 Is that your understanding of
6 the definition of "when"?

7 MS. MCCLURE: Same objections,
8 including outside the scope of
9 recross.

10 THE WITNESS: When, yes.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. Thank you, sir.

13 Now, the McKesson lawyer talked
14 to you about McKesson's reactions and
15 responses to the DEA feeling the need to
16 reach out to McKesson and inform them that
17 they were distributing pills to some of the
18 rogue Internet pharmacies.

19 Do you recall that line of
20 questioning?

21 A. Yes.

22 Q. Okay.

23 MR. EPPICH: Objection to the
24 form. Misstates the testimony.

25

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. And the McKesson lawyer
3 represented to you that McKesson reacted
4 promptly.

5 Do you recall that?

6 MR. BENNETT: You can answer.

7 THE WITNESS: Yes.

8 QUESTIONS BY MS. FITZPATRICK:

9 Q. Sir, isn't it true that
10 McKesson got busted?

11 MR. EPPICH: Objection.

12 Argumentative.

13 MS. MCCLURE: Form.

14 Argumentative.

15 QUESTIONS BY MS. FITZPATRICK:

16 Q. I forget the exact exhibit
17 number --

18 MR. EPPICH: Calls for
19 speculation.

20 QUESTIONS BY MS. FITZPATRICK:

21 Q. -- but Mr. Lanier showed you a
22 copy of the 2007 McKesson settlement
23 agreement.

24 Do you recall that?

25 MR. EPPICH: Objection.

1 Misstates the document. Form.

2 THE WITNESS: Yes.

3 QUESTIONS BY MS. FITZPATRICK:

4 Q. Okay. And, sir, did you know
5 that they did it again?

6 MR. EPPICH: Objection.

7 Argumentative. Form.

8 MS. MCCLURE: Form.

9 THE WITNESS: I'm not aware of
10 what happened after that time, no.

11 (Mapes Exhibit 38 marked for
12 identification.)

13 QUESTIONS BY MS. FITZPATRICK:

14 Q. All right. Sir, I'm going to
15 mark for you Exhibit Number 38, I believe
16 this is.

17 All right. Sir, I'd like you
18 to turn to --

19 MR. BENNETT: Counsel, can he
20 have a minute to review the document?

21 MS. FITZPATRICK: Oh, sure.

22 Well, and I'll tell you, the
23 only page I'm going to be looking at
24 is the one that ends in 5352 at the
25 bottom for the McKesson Bates.

1 MR. EPPICH: Object to the
2 scope and use of this document on
3 redirect.

4 MS. MCCLURE: And scope in
5 terms of authorization.

6 MR. BENNETT: Review as much of
7 this as you need to familiarize
8 yourself with the document.

9 THE WITNESS: Okay.

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. Mr. Mapes, do you see paragraph
12 number 2 on the page labeled 5352? That's
13 really the only paragraph I'm going to be
14 talking to you about and -- just a few
15 sentences in that paragraph.

16 Do you see I have it here on
17 the screen in front of you?

18 MR. EPPICH: Objection. Scope.
19 Foundation. Calls for speculation.

20 MR. BENNETT: And I'll object
21 to the extent the witness needs more
22 time to familiarize himself with the
23 document before he answers questions.

24 Whenever you're prepared,
25 please let her know that you're ready

1 to go forward.

2 THE WITNESS: Okay.

3 QUESTIONS BY MS. FITZPATRICK:

4 Q. And let's try this. Let me --
5 why don't I start, and if you have any
6 questions or if you feel you need to look at
7 any other of the pages, then we can do that.

8 Does that work for you, sir?

9 A. Okay.

10 Q. All right. So if you follow
11 with me here, it states: "McKesson
12 acknowledges that at various times during the
13 period from January 1, 2009" --

14 That's after the 2007
15 settlement agreement, correct?

16 MR. EPPICH: Objection. Scope.
17 Foundation. Calls for speculation.

18 THE WITNESS: Yes, it is.

19 QUESTIONS BY MS. FITZPATRICK:

20 Q. Okay.

21 -- "up through and including
22 the effective date of this agreement, it did
23 not identify or report to the DEA certain
24 orders placed by certain pharmacies which
25 should have been detected by McKesson as

1 suspicious based on the guidance contained in
2 the DEA letters about the requirements set
3 forth in 21 CFR Section 1301.74(b)."

4 And 74(b), that's the section
5 that Mr. Lanier had to point out to you,
6 correct? The McKesson lawyer hadn't shown
7 you that one initially?

8 MS. MCCLURE: Form. Compound.
9 Argumentative.

10 MR. EPPICH: Objection.
11 Misstates testimony. Form. Scope.
12 Foundation.

13 THE WITNESS: I don't recall
14 when that was first pointed out.

15 QUESTIONS BY MS. FITZPATRICK:

16 Q. Okay. And 21 USC Section
17 842(a)(5), "McKesson has taken steps to
18 prevent such conduct from occurring in the
19 future, including the measures delineated in
20 the compliance addendum."

21 Did I read that correctly?

22 MR. EPPICH: Objection.
23 Foundation. Calls for speculation.
24 Scope.

25 THE WITNESS: Yes.

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. And I found it interesting that
3 the same language about McKesson taking steps
4 to prevent such conduct from occurring in the
5 future appears in the 2007 settlement
6 agreement as well.

7 Did you know that, sir?

8 MR. EPPICH: Objection. Scope.
9 Foundation. Calls for speculation.

10 THE WITNESS: No, I didn't.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. So, sir, even if the DEA is
13 using the tools that the lawyer for Walmart
14 talked about for quite a bit yesterday, one
15 such being a suspension order and having the
16 Department of Justice -- supporting the
17 Department of Justice and entering into a
18 settlement agreement, that doesn't
19 necessarily mean the company won't do it
20 again, correct?

21 MR. EPPICH: Objection. Scope.
22 Foundation. Calls for speculation.
23 Calls for legal conclusion and
24 misstates facts.

25 MR. STEPHENS: Objection. Also

1 misstates the question and the
2 testimony.

3 QUESTIONS BY MS. FITZPATRICK:

4 Q. You can answer, sir.

5 A. I have now forgotten the
6 question.

7 Q. No problem. So I'll read it
8 back.

9 Even if the DEA is using the
10 tools -- you recall the discussion with the
11 Walmart lawyer yesterday about the tools
12 available to the DEA that in his opinion
13 another person may not have access to.

14 Do you recall that?

15 A. I do.

16 Q. Okay. So even if the DEA is
17 using those tools, one of which being a
18 suspension order that could lead to a
19 settlement agreement, that does not mean that
20 the company is not going to continue to break
21 the law, does it?

22 MR. EPPICH: Objection. Scope.
23 Form. Calls for speculation.

24 THE WITNESS: It does not.

25

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. And the fact that McKesson, in
3 2007, signed a settlement agreement and
4 agreed to not do it again, they did it again,
5 didn't they?

6 MR. EPPICH: Objection. Form.
7 Foundation. Scope. Misstates the
8 documents and testimony and misstates
9 facts.

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. Didn't they admit to doing
12 that, sir?

13 MR. EPPICH: Same objections.

14 THE WITNESS: Yes, they did.

15 QUESTIONS BY MS. FITZPATRICK:

16 Q. Okay. Do you think it's just
17 the cost of doing business for the company?

18 MR. EPPICH: Objection.

19 Argumentative.

20 QUESTIONS BY MS. FITZPATRICK:

21 Q. These settlement agreements?

22 MR. EPPICH: Objection.

23 Argumentative. Form. Calls for
24 speculation. Scope.

25 THE WITNESS: No, I don't think

1 it's just the cost of doing business.

2 QUESTIONS BY MS. FITZPATRICK:

3 Q. Okay. And that's your opinion
4 sitting here today as a paid consultant for
5 one of the companies that's a defendant in
6 this litigation, correct?

7 A. Yes.

8 MS. MCCLURE: Objection.

9 Argumentative.

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. Now, I want to ask -- the last
12 thing I'm going to ask you about is the
13 lawyer for McKesson talked to you a lot about
14 HIPAA and that companies don't have patient
15 medical records.

16 Do you recall that?

17 A. I recall the discussion, yes.

18 Q. Okay. And I believe what he
19 was getting at was he was trying to make the
20 point with you that because the companies --
21 because he represented to you that companies
22 did not have the patient medical records,
23 there was no way for the companies to monitor
24 overprescribers.

25 Was that your understanding?

1 MR. EPPICH: Objection.

2 Misstates the question and testimony.

3 Form.

4 THE WITNESS: That wasn't my

5 understanding of his question.

6 QUESTIONS BY MS. FITZPATRICK:

7 Q. Okay. Let me ask you this: Do
8 you think it would be more fair if the
9 McKesson lawyer had told you the whole truth,
10 had talked with you and told the jury the
11 whole truth?

12 MS. MCCLURE: Objection.

13 Argumentative. Scope.

14 Mischaracterizes the questions.

15 MR. EPPICH: I'll join in that
16 objection. Thank you very much.

17 THE WITNESS: And the question
18 is that the --

19 QUESTIONS BY MS. FITZPATRICK:

20 Q. Is it important to tell the
21 whole truth, is the question.

22 MS. MCCLURE: All those same
23 objections.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. Okay. And did you know that
3 manufacturers have the data of not only their
4 top prescribers but all prescribers?

5 MR. EPPICH: Objection. Form.
6 Foundation. Calls for speculation.
7 Vague.

8 MS. MCCLURE: Scope. Both of
9 the Touhy notice as well as outside
10 the scope of redirect.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. You can answer, sir.

13 A. I know that there is data
14 available to manufacturers. Whether it's
15 complete and of all prescribers, I don't
16 know, but --

17 Q. So you don't -- I'm sorry, sir,
18 were you finished?

19 A. Yeah. I don't know the
20 completeness and the scope of the data, but
21 there is some data available, yes.

22 Q. Okay. And the companies can do
23 the red flag test without a prescription
24 record, correct?

25 MS. MCCLURE: Objection.

1 Vague. Ambiguous. Foundation.

2 Scope, both of Touhy and redirect.

3 MR. EPPICH: Also object that
4 the demonstrative does not reflect the
5 witness' testimony if it is meant to
6 do so.

7 MS. MCCLURE: But I assume we
8 still have a standing objection to
9 those.

10 MS. FITZPATRICK: You do, and
11 it's a demonstrative. I can write
12 whatever I want. It doesn't have to
13 be exactly what the witness says.

14 QUESTIONS BY MS. FITZPATRICK:

15 Q. But go ahead, Mr. Mapes.

16 MR. EPPICH: Just making a
17 record in case you want to use it at
18 trial.

19 THE WITNESS: That's correct.

20 MS. FITZPATRICK: Okay. Let me
21 take a minute. I don't think we have
22 anything else, but let me just...

23 All right. We're done. Thank
24 you, Mr. Mapes.

25 MR. BENNETT: Mr. Mapes, you'll

1 have an opportunity to read this
2 deposition or you can waive that
3 right. It's up to you to decide
4 whether you want to review it or
5 whether you want to waive signature.

6 THE WITNESS: And if I review
7 it and find something that I --

8 MR. BENNETT: You would have
9 the right in your errata sheet to
10 correct errors.

11 But you have to tell the court
12 reporter now, and if you don't tell
13 her anything, then you don't waive
14 signature and you'll get it to review.

15 THE WITNESS: Yeah, I think I'd
16 rather review it.

17 MR. BENNETT: He does not want
18 to waive signature. Thank you.

19 All right. Thank you,
20 Mr. Mapes.

21 VIDEOGRAPHER: This concludes
22 today's deposition. The time is 2:22.
23 (Deposition concluded at 2:22 p.m.)

24 - - - - -

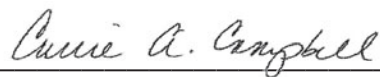
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CERTIFICATE

I, CARRIE A. CAMPBELL, Registered
Diplomate Reporter, Certified Realtime
Reporter and Certified Shorthand Reporter, do
hereby certify that prior to the commencement
of the examination, Michael Mapes, was duly
sworn by me to testify to the truth, the
whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the
foregoing is a verbatim transcript of the
testimony as taken stenographically by and
before me at the time, place and on the date
hereinbefore set forth, to the best of my
ability.

I DO FURTHER CERTIFY that I am
neither a relative nor employee nor attorney
nor counsel of any of the parties to this
action, and that I am neither a relative nor
employee of such attorney or counsel, and
that I am not financially interested in the
action.



CARRIE A. CAMPBELL,
NCRA Registered Diplomate Reporter
Certified Realtime Reporter
Notary Public
Dated: July 13, 2019

1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the
6 appropriate space on the errata sheet for any
7 corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it. You are signing
10 same subject to the changes you have noted on
11 the errata sheet, which will be attached to
12 your deposition.

13 It is imperative that you return
14 the original errata sheet to the deposing
15 attorney within thirty (30) days of receipt
16 of the deposition transcript by you. If you
17 fail to do so, the deposition transcript may
18 be deemed to be accurate and may be used in
19 court.

20

21

22

23

24

25

ACKNOWLEDGMENT OF DEPONENT

I, _____, do
hereby certify that I have read the foregoing
pages and that the same is a correct
transcription of the answers given by me to
the questions therein propounded, except for
the corrections or changes in form or
substance, if any, noted in the attached
Errata Sheet.

Michael Mapes

DATE

Subscribed and sworn to before me this
_____ day of _____, 20 _____.

My commission expires: _____

Notary Public

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LAWYER'S NOTES

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